

Gonzalez	Parkhouse
Hazlewood	Patman
Herring	Ratliff
Hudson	Reagan
Kazen	Rogers
Krueger	Schwartz
Lane	Secrest
Martin	Smith
Moffett	Weinert
Moore	Willis
Owen	

## Nays—1

Hardeman

## Absent

Roberts

## Resolutions Signed

The President signed in the presence of the Senate after the caption had been read, the following enrolled resolution:

H. C. R. No. 20, Directing Enrolling Clerk of the House to make certain corrections in H. B. No. 33.

## Welcome Resolutions

S. R. No. 47—By Senators Krueger and Moore: Extending welcome to students of Blinn College of Brenham and W. C. Schwartz.

S. R. No. 48—By Senator Schwartz: Extending welcome to students of Island Elementary School of Galveston, teachers and sponsors.

## Recess

Senator Hardeman moved that the Senate stand recessed until 3:00 o'clock p.m. today.

Senator Crump moved that the Senate stand recessed until 10:00 o'clock a.m. tomorrow.

Question first on the motion by Senator Crump to recess until 10:00 o'clock a.m. tomorrow the motion prevailed by the following vote:

## Yeas—20

Calhoun	Kazen
Creighton	Krueger
Crump	Lane
Dies	Moore
Fuller	Owen
Gonzalez	Parkhouse
Hardeman	Reagan
Hazlewood	Secrest
Herring	Weinert
Hudson	Willis

## Nays—9

Aikin	Patman
Baker	Rogers
Colson	Schwartz
Martin	Smith
Moffett	

## Absent

Ratliff                      Roberts

Accordingly, the Senate at 12:25 o'clock p.m. took recess until 10:00 o'clock a.m. tomorrow.

## TENTH DAY

(Continued)

(Wednesday, August 2, 1961)

## After Recess

The Senate met at 10:00 o'clock a.m. and was called to order by Senator Hardeman.

## Record of Vote

Senator Lane asked to be recorded as voting "Nay" on the final passage of S. B. No. 35 on yesterday.

## At Ease

The Presiding Officer announced at 10:05 o'clock a.m. that the Senate would stand At Ease subject to the Call of the Chair.

(President in Chair.)

## Reports of Standing Committees

Senator Aikin by unanimous consent submitted the following reports:

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your committee on Counties, Cities and Towns, to whom was referred H. B. No. 50, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

AIKIN, Chairman.

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your committee on Counties, Cities and Towns, to whom was referred H. B. No. 62, have had the

same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

AIKIN, Chairman.

Senator Colson by unanimous consent submitted the following report:

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Public Health to whom was referred H. B. No. 24, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do not pass but that the Committee Substitute adopted in lieu thereof do pass and be printed.

COLSON, Chairman.

C. S. H. B. No. 24 was read the first time.

Senator Rogers by unanimous consent submitted the following reports:

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Education to whom was referred H. B. No. 10, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

ROGERS, Chairman.

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Education to whom was referred H. B. No. 11, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

ROGERS, Chairman.

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Education, to whom was referred S. B. No. 37, have had the same under consideration, and we are instructed to

report it back to the Senate with the recommendation that it do pass and be printed.

ROGERS, Chairman.

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Education, to whom was referred S. B. No. 64, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

ROGERS, Chairman.

#### Bill Signed

The President signed in the presence of the Senate after its caption had been read, the following enrolled bill:

H. B. No. 33, A bill to be entitled "An Act providing for the creation of a county-wide hospital district in Hopkins County; etc.; and declaring an emergency."

#### House Bill 20 on Second Reading

Senator Lane asked unanimous consent to suspend the regular order of business and take up H. B. No. 20 for consideration at this time.

There was objection.

Senator Lane then moved to suspend the regular order of business and take up H. B. No. 20 for consideration at this time.

The motion prevailed by the following vote:

Yeas—28

Aikin	Martin
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Hardeman	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Weinert
Lane	Willis

Nays—3

Gonzalez	Patman
Krueger	

The President laid before the Senate on its second reading and passage to third reading:

H. B. No. 20, A bill to be entitled "An Act providing additional revenue for the support of the State government amending Chapter 3, Title 122A, Revised Civil Statutes of Texas, providing a minimum tax of one cent per MCF on natural gas production with the difference between the present tax and the minimum being levied on dedicated reserve severance beneficiaries; amending Arts. 12.01 and 12.02 of Chapter 12, Title 122A, Revised Civil Statutes of Texas, excluding manufacturing debt from the corporation franchise tax base for five years and providing for a two-factor allocation formula for this tax; amending Chapter 20, Title 122A, Revised Civil Statutes of Texas to provide for a limited excise sales and use tax; amending Arts. 6.01 and 6.03 of Chapter 6, Title 122A, Revised Civil Statutes of Texas, increasing the tax on motor vehicle sales; increasing the operator's, commercial operator's and chauffeur's license fees as provided by Sec. 19, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended and allocating the increased revenue to the General Revenue Fund; amending Art. 9.25 of Chapter 9, Title 122A, Revised Civil Statutes of Texas, requiring allocation of motor fuel tax revenue to the Available School Fund in August each year; making allocations of revenue; providing for the transfer of funds; providing an effective date; repealing Chapter 22, Title 122A, Revised Civil Statutes of Texas and all other laws in conflict; providing for severability; and declaring an emergency."

The bill was read the second time.

Senator Lane offered the following Committee Amendment to the bill:

Amend House Bill No. 20 by striking all below the enacting clause and inserting in lieu thereof the following:

#### Article I

Section 1. Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, is amended to read as follows:

#### "Chapter 20

Limited Sales, Excise and Use Tax.

"Art. 20.01 Title—Definitions. This Chapter is known and may be cited as

the Limited Sales, Excise and Use Tax Act, and the following words shall have the following meanings unless a different meaning clearly appears from the context:

"(A) Person. 'Person' shall mean and include any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, received, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, cooperative, assignee, or any other group or combination acting as a unit. 'Person' shall also include the United States or any agency thereof, this State, or any agency hereof, or any city, county, special district, or other political subdivision of this State to the extent engaged in the selling of tangible personal property taxable under this Chapter.

"(B) Comptroller. 'Comptroller' shall mean the Comptroller of Public Accounts of the State of Texas.

"(C) Business. 'Business' includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

"(D) Receipts.

"(1) 'Receipts' means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the property sold. However, in accordance with such rules and regulations as the Comptroller may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

"(b) The cost of the materials used, labor or service costs, interest paid, losses or any other expense.

"(c) The cost of transportation of the property prior to its sale to the purchaser.

"(2) 'Receipts' does not include any of the following:

"(a) Cash Discounts allowed on sales.

"(b) Sales price of property returned by customers when the full sales price is refunded either in cash or credit.

"(c) The amount charged for labor or services rendered in installing, applying, remodeling or repairing the property sold.

"(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(e) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(f) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of a like kind or nature.

"(g) Charges for transportation of goods after sale.

"(3) For purposes of the limited sales tax, if the retailer establishes to the satisfaction of the Comptroller that the limited sales tax has been added to the total amount of the sale price and has not been absorbed by him, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

"(E) In this State or Within the State. 'In this State' or 'Within the State' means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

"(F) Occasional Sale. 'Occasional Sale' means one or two sales of tangible personal property at retail during any 12-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling such tangible personal property at retail.

"(G) Purchase. 'Purchase' means:

"(1) Any transfer of title or possession, exchange, barter, sale or rental, conditional or otherwise, in any manner or by any means whatsoever,

of tangible personal property for a consideration.

"(2) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

"(3) A transfer, for a consideration, of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

"(H) Rental Price or Lease Price.

"(1) 'Rental Price' or 'Lease Price' means the total amount for which tangible personal property is rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the property rented or leased.

"(b) The cost of material used labor or service cost, interest charged, losses, or any other expenses.

"(c) The cost of transportation of the property at any time.

"(2) The total amount for which property is rented or leased includes all of the following:

"(a) Any services which are a part of the lease or rental.

"(b) Any amount for which credit is given to the lessee or rentee by the lessor or rentor.

"(I) Retail Sale or Sale at Retail. 'Retail Sale' or 'Sale at Retail' means:

"(1) A sale for any purpose other than for resale in the regular course of business of tangible personal property.

"(2) The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery in such cases shall include the retail selling price of the property in his receipts.

"(J) Retailer.

"(1) 'Retailer' includes:

"(a) Every seller engaged in the business of making sales of tangible personal property for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

"(b) Every person making more than two retail sales of tangible per-

sonal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

"(c) Every person who leases or rents to another tangible personal property for storage, use or other consumption.

"(2) When the Comptroller determines that it is necessary for the efficient administration of this Chapter to regard any salesman, representative, peddlers or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Comptroller may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this Chapter.

"(K) Sale.

"(1) "Sale" means and includes any transfer of title or possession, or segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"(2) "Sale" includes:

"(a) The producing, fabrication, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting.

"(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

"(c) The furnishing, preparing or serving for a consideration of food, meals, or drinks.

"(d) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

"(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

"(L) Sales Price

"(1) "Sales Price" means the total amount for which tangible personal property is sold, valued in money,

whether paid in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the property sold.

"(b) The cost of material used, labor or service costs, interest paid, losses, or any other expenses.

"(c) The cost of transportation of the property prior to its sale or purchase.

"(2) The total amount for which property is sold includes all of the following:

"(a) Any services which are a part of the sale.

"(b) Any amount for which credit is given to the purchaser by the seller.

"(3) 'Sales Price' does not include any of the following:

"(a) Cash discounts allowed on sales.

"(b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit.

"(c) The amount charged for labor or services rendered in installing, applying, remodeling or repairing the property sold.

"(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(e) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(f) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

"(g) Charges for transportation of goods after sale.

"(M) Seller. "Seller" includes every person engaged in the business of selling, leasing or renting tangible personal property of a kind, the receipts from the retail sale, lease or rental of which are required to be included in the measure of the limited sales tax.

"(N) Storage. "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state

of tangible personal property purchased from a retailer.

"(O) Storage and Use. Exclusion.—"Storage" and "Use" do not include the keeping, retaining or exercising of any right of power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

"(P) Tangible Personal Property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses and includes gas and electric utility service and intra-state telephone and telegraph service.

"(Q) Taxpayer. "Taxpayer" means any person liable for tax under this Chapter.

"(R) Use. "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property except that it does not include the sale of that property in the regular course of business.

"(S) Sale for Resale. "Sale for Resale" shall mean a sale of tangible personal property to any purchaser who is purchasing said property for the purpose of reselling it in the normal course of his business. A sale for resale shall include a sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing said tangible personal property to another person, but not if incidental to the renting or leasing of real estate.

"(T) Contractor or Repairman. "Contractor" or "Repairman" shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate, and who, as a necessary and incidental part of performing such services incorporates tangible personal property belonging to him into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such property furnished by him and incorporated into the property of his customer, for all of the purposes of this Chapter.

"(1) The above provision shall apply only if the contract between the person performing the services and the person receiving them contains a lump sum price covering both the performance of the services and the furnishing of the necessary incidental material.

"(2) If the contract between the person providing the services and the person receiving them contains separate amounts applicable to the performance of the services and the furnishing of the material then the above section shall not apply, and the person furnishing the materials shall be liable for the limited sales tax upon the agreed price of the materials as thus set forth in the contract. Provided, however, that the agreed price of the materials shall not be less than the actual cost of such materials to the person so providing them.

"(3) In any case where the person so providing such materials has paid the limited sales tax to his supplier when purchasing the property, he shall be entitled to credit the tax so paid to his supplier against any tax imposed by this Chapter with respect to his subsequent sale of that property.

"(U) Manufacturing. "Manufacturing" shall mean and include every operation commencing with the first production stage of any article or tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) which it has when transferred by the manufacturer to another.

"Art. 20.02. Imposition of Limited Sales Tax. There is hereby imposed upon each separate sale at retail of tangible personal property made within this State a limited sales tax at the rate of 2% of the sale price of each item or article of tangible personal property when sold at retail in this State.

"(A) Method of Collection and Rate of Limited Sales Tax. The tax hereby imposed shall be collected by the retailer from the consumer.

"(1) The Tax shall be as follows and shall be collected by using the following bracket system formula on each retail sale:

Amount	Tax
\$ .01 to \$ .24	NO TAX
.25 to .74	\$.01
.75 to 1.24	.02
1.25 to 1.74	.03
1.75 to 2.24	.04

Provided, further that for each additional 50¢ of purchase, or fraction thereof, 1¢ limited sales tax shall be collected thereon.

"(2) The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the tax imposed in this Chapter or for any other purpose in connection with such taxes is prohibited.

"(B) Assumption or Absorption of Tax by Retailer: Unlawful Advertising.

"(1) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, either directly or indirectly, that the tax or any part thereof will be assumed or absorbed by him or that it will not be added to the selling price of the property sold or that, if added, it or any part of it will be refunded. Provided however, that this paragraph (B) does not prohibit any utility from billing its customers one lump sum covering the utility sales price plus the tax imposed by this Chapter.

"(2) Any person violating any provision of this section is guilty of a misdemeanor.

"(C) Limited Sales Tax Permit Application.

"(1) Every person desiring to engage in or to conduct business as a seller within this State shall file with the Comptroller an application for a permit for each place of business.

"(2) Every application for a permit shall:

"(a) Be made upon a form prescribed by the Comptroller.

"(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

"(c) Set forth such other information as the Comptroller may require.

"(d) The application shall be signed by the owner if he is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

"(D) Limited Sales Permit Issuances. After compliance with this Article, paragraph (C), by the applicant, the Comptroller shall grant and issue to each applicant without charge a separate permit for each place of business within the State. A permit shall not be assignable, and shall be

valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

"(E) Revocation, Suspension of Permit: Procedure

"(1) Whenever any person fails to comply with any provision of this Chapter relating to the limited sales tax or with any rule or regulation of the Comptroller relating to such tax prescribed and adopted under this Chapter, the Comptroller upon hearing, after giving the person 20 days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

"(2) The Comptroller shall give to the person written notice of the suspension or revocation of any of his permits.

"(3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

"(4) The Comptroller shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this Chapter relating to the limited sales tax and the regulations of the Comptroller.

"(5) The action of the Comptroller may be appealed by the taxpayer in the same manner as a final deficiency determination.

"(F) Presumption of Taxability: Resale Certificate For the purpose of the proper administration of this Chapter and to prevent evasion of the limited sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for the purpose of reselling, leasing or renting it.

"(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling, leasing or renting tangible personal property. A resale certificate

may be given by a purchaser, who at the time of purchasing the tangible personal property, intends to sell, lease, or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be resold, leased or rented or will be used for some other purposes.

**"(H) Forms and Contents of Resale Certificate**

**"(1) The certificate shall**

**"(a) Be signed by and bear the name and address of the purchaser.**

**"(b) Indicate the number of the permit, if any, issued to the purchaser.**

**"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.**

**"(2) The certificate shall be substantially in such form as the Comptroller may prescribe.**

**"(I) Liability of Purchaser Giving Resale Certificate.** If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of business, the use shall be taxable to the purchaser as of the time when the property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

**"(J) Resale Certificate; Commingled Fungible Goods.** If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of goods covered by the resale certificate until a quantity of such goods so commingled has been sold.

**"(K) Bad Debts.** Credit shall be allowed to the retailer for taxes paid on sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

**"(L) Refunds and Allowances.** Credit shall be allowed to the retailer for taxes paid on the amount

of any refunds or credits allowed to a purchaser as a result of a bona fide renegotiation of a sales price. Such renegotiation shall include agreements by which the seller refunds or allows credit for any amount in satisfaction for an alleged breach of warranty with respect to tangible personal property previously sold him to the person with whom said agreement is made.

**"Art. 20.03. Imposition and Rate of Use Tax.** An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased, leased or rented from any retailer on or after September 1, 1961, for storage, use or other consumption in this State at the rate of 2% percent of the sales price of the property or, in the case of leases or rentals, of said lease or rental prices.

**"(A) Liability for Use Tax: Extinguishment of Liability.** Every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the tax. His liability is not extinguished until the tax has been paid to this State, except that a receipt from a retailer maintaining a place of business in this State or from a retailer who is authorized by the Comptroller, under such rules and regulations as he may prescribe, to collect the tax and who is, for the purposes of this Chapter relating to the use tax, regarded as a retailer maintaining a place of business in this State, given to the purchaser pursuant to paragraph (B) of this Article is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

**"(B) Collection by Retailer: Purchaser's Receipt.** Every retailer maintaining a place of business in this State and selling, leasing or renting tangible personal property for storage, use or other consumption in this State, shall, at the time of making the sales, collect any use tax which may be due from the purchaser and shall give the purchaser a receipt therefor in the manner and form prescribed by the Comptroller.

**"(C) Assumption, Absorption of Tax by Retailers, Unlawful Advertising.** It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, di-



rectly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the property sold, rented or leased, or that, if added, it or any part thereof will be refunded.

"(D) Unlawful Acts. Any person convicted of violating paragraphs (B) or (C) of this section shall be guilty of a misdemeanor and shall suffer the penalties set forth in Art. 20.12 (E) of this Chapter.

"(E) Registration of Retailers. Every retailer selling, leasing or renting property for storage, use or other consumption in this State shall register with the Comptroller and give:

"(1) The name and address of all agents operating in this State.

"(2) The location of all distribution or sales houses or offices or other places of business in this State.

"(3) Such other information as the Comptroller may require.

"(F) Presumption of Purchase for Use: Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the use tax and of the duty to collect the use tax, it shall be presumed that tangible personal property sold, leased or rented by any person for delivery in this State is sold, leased or rented for storage, use or other consumption in this State until the contrary is established. The burden of proving the contrary is upon the person who sells, leases or rents the property unless he takes from the purchaser a certificate to the effect that the property is purchased for resale, leasing or renting.

"(G) Effect of Resale Certificate. The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property. A resale certificate may be given by a purchaser who, at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be so sold, leased or rented or will be used for some other purpose.

"(H) Form and Contents of Resale Certificate.

"(1) The certificate shall:

"(a) Be signed and bear the name and address of the purchaser.

"(b) Indicate the number of the

permit, if any, issued to the purchaser.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

"(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

"(I) Liability of Purchaser Giving Resale Certificate; Use of Article Bought for Resale. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale, lease or rental, in the regular course of business, the use shall be taxable to the purchaser as of the time when the property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

"(J) Improper Use of Resale Certificates. Any person who gives a resale certificate to the seller for property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Art. 20.12 (B) of this Chapter.

"(K) Resale Certificate: Commingled Fungible Goods. If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such a similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods covered by the resale certificate until a quantity of commingled goods equal to the quantity of such goods so commingled has been sold.

"(L) Presumption of Purchase from Retailer. It shall be further presumed in the absence of evidence to the contrary, that tangible personal property shipped or brought to this State by the purchaser after the effective date of this Act was purchased from a retailer on or after the effective date of this Act for storage, use, or other consumption in this State.

"Art. 20.04. Exemptions. 'Exempted from taxes imposed by this Chapter,' as used herein, means exempted from

the computation of the amount of the taxes imposed.

**Exemption Certificates.** If a Purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the limited sales tax, and if the purchaser then uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of the limited sales tax as if he were a retailer making a retail sale of the property at the time of such use, and the cost of the property to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

**"(A) Constitution and Statutory Exemptions.** There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this State of tangible personal property the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

**"(B) Items Taxed Under Existing Statutes.**

**"(1)** There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental, production or distribution or the storage, use or other consumption in this State of (a) natural gas as taxed under the provisions of Chapter Three of this Title; (b) oil as taxed under the provisions of Chapter Four of this Title; (c) sulphur as taxed under the provisions of Chapter Five of this Title; (d) motor vehicles, trailers and semi-trailers as defined and taxed under the provisions of Chapter Six of this Title; (e) cigarettes as defined and taxed under the provisions of Chapter Seven of this Title; (f) cigars and tobacco products as defined and taxed under the provisions of Chapter Eight of this Title; (g) motor fuels as defined, taxed or exempted under the provisions of Chapter Nine of this Title; (h) special fuels as defined, taxed or exempted under the provisions of Chapter Ten of this Title; and (i) cement as taxed under

the provisions of Chapter Eighteen of this Title.

**"(2)** There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when, consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor.

**"(3)** There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of water.

**"(C) Component Parts: Packaging and Containers.**

**"(1)** Component Parts. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of, tangible personal property which will become an ingredient or component part of, or be incorporated into or used or consumed in a manufactured, processed or fabricated product of tangible personal property produced for ultimate sale at retail within or without this State; and tangible personal property, such as chemical materials used as catalytic agents, used or consumed in any manner in manufacturing, processing or fabricating a product of tangible personal property for ultimate sale at retail within or without this State. The exemption provided by this subsection does not apply to machinery or equipment having a useful life, when new, in excess of six (6) months or to replacement parts and accessories for such machinery and equipment or to tangible personal property such as hand tools, intra-plant transportation equipment, expendable items and supplies, office machines and supplies and other materials which are incidental to or useful in manufacturing, processing or fabricating operations.

**"(2) Wrapping, Packing and Packaging Supplies.**

**"(a)** There are exempted from the taxes imposed by this Chapter the

receipts from sales of all internal and external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing or packaging any tangible personal property for the purpose of expediting or furthering in any way the sale of that property.

"(b) For the purpose of this section, wrapping, packing and packaging supplies shall include, but shall not be limited to:

"(1) Wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, labels, staples, glue and mailing tubes;

"(2) Property used inside a package in order to shape, form, preserve, stabilize or protect the contents, such as, but not limited to, excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay and laths.

"(3) Containers.

"(a) There are exempted from the taxes imposed by this Chapter the receipts of sales, leases, or rentals of, and the storage, use or other consumption, in this State, of:

"(1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

"(2) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this Chapter.

"(3) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

"(a) As used in this Article, the term 'returnable containers' means containers of a kind customarily returned by the buyer of the contents for re-use. All other containers are 'nonreturnable containers.'

"(D) Meals and Food Products; Sales to Students, Teachers. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of, meals and food products for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, to the students or teachers of an elementary or secondary school during the regular school day.

"(E) Interstate Shipments.

"(1) Property Shipped Outside State Pursuant to Sales Contract; Delivery by Retailer. There are exempted from the taxes imposed by this Chapter receipts from any sale of tangible personal property which is shipped to a point outside this State pursuant to the contract of sale by delivery by the retailer to such point by means of:

"(a) Facilities operated by the retailer.

"(b) Delivery by the retailer to a carrier for shipment to a consignee at such point; or

"(c) Delivery by the retailer to a customs broker or forwarding agent for shipment outside this State.

"(2) Common Carriers. There are exempted from the computation of the limited sales tax, the receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this State and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier outside the State of Texas.

"(3) Special Use Tax Exemption. The use tax imposed herein shall not apply to:

"(1) The use, in this State, of tangible personal property which is acquired outside this State and which is moved into this State for use as a licensed and certificated carrier of persons or property.

"(2) The temporary storage in this State of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property which is used solely outside this State.

"(3) The storage, use or consumption of tangible personal property which is acquired outside this State, the sale, lease or rental or the storage, use or consumption of which property would be exempt from the limited sales or use tax were it purchased within this State.

"(4) The storage and use, in this State, of tangible personal property acquired outside this State for use as

a repair or replacement part for and actually affixed to a licensed and certificated carrier of persons or property.

"(F) United States; State; Political Subdivisions; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by:

"(1) The United States, its unincorporated agencies and instrumentalities.

"(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

"(3) The State of Texas, its unincorporated agencies and instrumentalities.

"(4) Any county, city, special district or other political subdivision of this State.

"(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

"(G) Occasional Sales. There are exempted from the taxes imposed by this Chapter the receipts from the occasional sales of tangible personal property and the storage, use or other consumption in this State of tangible personal property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale.

"(H) Written Contracts and Bids Executed Prior to the Effective Date of this Act. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use or rental of, and the storage use or other consumption in this State of, tangible personal property (i) used for the performance of a written contract entered into prior to the effective date of this Act or (ii) pursuant to the obligation of a bid or bids submitted prior to the effective date of this Act, which bid or bids could not be altered or withdrawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to

change or modification by reason of a tax imposed by this Chapter.

"Provided, however, that notice of such contract or bid by reason of which an exclusion is claimed under this paragraph (H) must be given by the taxpayer to the Comptroller on or before the lapse of one hundred and twenty (120) days from the date of passage of this Act.

"(I) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any tangible personal property, the amount of any like tax paid by that taxpayer in another State, territory or possession of the United States of America with respect to the sale, purchase or use of such property; provided, that such other States, territories, or possessions provide for a similar tax credit for taxpayers of this State.

"(J) Use Tax Inapplicable When Limited Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this State of property, the receipts from the sale, lease, rental or use of which are required to be included in the measure of the limited sales tax, or property upon which a use tax has been paid by the taxpayer using said property, is exempted from the use tax imposed by this Chapter.

"(K) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

"(1) "Food products" shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleomargarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruits and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa and cocoa products; or any combination of the above.

"(2) "Food products" shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form;

"(b) Water, including mineral bot-

tled water, carbonated water, ice and candy;

"(c) Meals served on or off the premises of the vendor or drinks or food furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the vendor. Provided, however, meals, food and drink served to patients and inmates of hospitals and other institutions licensed by the State for the care of human beings shall be deemed "food products."

"(L) Drugs, Medicines, Prosthetic Devices. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of drugs and medicines when perscribed by a licensed physician. There are also exempted from the taxes imposed by this Chapter braces, spectacles, hearing aids, and orthopedic and dental prosthetic appliances.

"(M) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

"(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption.

"(2) Feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

"(3) Seeds, annual plants, fungicides and insecticides applied thereto, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

"(4) Fertilizer to be applied to land the products of which are to be used as food for human consumption or sold in the regular course of business.

"(5) Farm machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(N) Sale for Resale: Leasing or Renting.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from all sales for resale, leasing or renting.

"(2) However, if a person purchase

tangible personal property for the purpose of leasing or renting it to another person and if he later sells it by means of an occasional sale before he has collected and paid to this State as much tax on the rental or lease charges as would have been due and payable to this State had he not purchased the property for the purpose of so renting and leasing it, he shall, at the time of his occasional sale of said property include in his receipts from taxable sales the amount by which his purchase price exceeded the amount of rents collected by him on said property.

"(3) Where a lessor makes a retail sale of leased tangible personal property to a lessee of that property under an agreement whereby certain rental payments are credited against the purchase price of that property, he need not collect or pay any tax on the sale price to the extent that he has collected and paid on such rental payments.

"(O) Vessels.

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships, vessels, including commercial fishing vessels, or barges, of fifty (50) tons load displacement and over, built in this State, and the receipts from the sale of such ships, vessels, or barges when sold by the builder thereof.

"(2) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials and supplies purchased by the owners or operators of ships or vessel operating exclusively in foreign or interstate coastwise commerce, where such materials and supplies are loaded upon the ship or vessel for use or consumption in the maintenance and operation thereof; nor to materials and supplies used in the repair of such ships and vessels where such materials and supplies enter into and become a component part of such ships or vessels.

"(3) The taxes imposed by this Chapter shall not apply to the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of drilling equipment used for oil exploitation or

production when such equipment is built for exclusive use outside the boundaries of the State and is removed forthwith from the State upon completion.

"(P) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property, or sold to any foreign government or sold to persons who are not residents of this State.

"(Q) Certain Utility Service Exempt. There are exempted from the taxes imposed by this Chapter the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity when used in industrial, manufacturing, mining, agricultural, dairy or poultry operations or pumping water for irrigation or for electrical processes such as electroplating and electrolysis.

"(R) Rolling Stock. There are exempted from the taxes imposed by this Chapter receipts from any sale, use, storage or other consumption of locomotives and rolling stock, including fuel or supplies for the direct operation of locomotives and trains.

"(S) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or other consumption in this State of books consisting wholly of writings sacred to any religious faith.

"(T) Work Clothes.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, storage, use or other consumption in this State of any single article of outer wearing apparel, the retail price of which is less than Ten Dollars (\$10.00).

(2) For the purpose of this Section, the term "article of outer wearing apparel" shall not be construed to include clothing accessories such as cuff links, tie holders, tie clasps, belts, cravats, scarves, collar stays, stick pins, billfolds, wallets, hand bags, canes, unattached buttons, ornamental jewelry of any type, bathing suits, sleeping garments, bathrobes, lingerie, negligees, and lounging pajamas.

(3) For the purpose of this Section, any components of outer wearing apparel, as defined herein, ordinarily sold or offered for sale as a pair, suit

or ensemble shall be, when sold, deemed to be the sale of a single article.

(4) Whenever any single article of outer wearing apparel sells for a retail price of Ten Dollars (\$10.00) or more, the tax shall be computed on the entire selling price of the article in accordance with the schedule set forth in Article 20.02 (A) of this Chapter.

"Art. 20.05. Return and Payments.

"(A) Due Date of Taxes. The taxes imposed by this Chapter are due and payable to the Comptroller quarterly on or before the last day of the month next succeeding each quarterly period.

"(B) Method Retailer is to Use in Computing Tax. The limited sales tax levied under Art. 20.02 hereof, shall be computed and paid to the Comptroller on the basis of 2% of all receipts from the total sales of such tangible personal property sold by such retailer under said Article.

"(C) Return: Time for Filing: Persons Required to File: Signatures: Accounting Basis.

"(1) On or before the last day of the month following each quarterly period of 3 months, a return for said quarterly period shall be filed with the Comptroller in such form as the Comptroller may prescribe.

"(2) For purposes of the limited sales tax a return shall be filed by every person subject to the tax. For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the State and by every person who has purchased tangible personal property, the storage, use or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

"(3) Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

"(4) A taxpayer who keeps his regular books and records on a cash basis or on an accrual basis or on any generally recognized accounting basis which correctly reflects the operation of the business, may file the tax returns required by this Chapter on the same accounting basis that is used for the regular books and records.

"(D) Contents of Return.

"(1) For the purposes of the limited sales tax, the return shall show the sale or receipts of the retailer or seller during the preceding reporting

period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total receipts from sales of property sold, by him during the preceding reporting period which was purchased for the purpose of storage, use or consumption in this State.

"(2) Gross proceeds from taxable rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the Comptroller may prescribe.

"(3) In case of a return filed by the purchaser; the return shall show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period.

"(4) The return shall also show the amount of the taxes for the period covered by the return and such other information as the Comptroller deems necessary for the proper administration of this Chapter.

"(E) Reimbursement to Taxpayer for Collection of Tax; Prepayments. The taxpayer shall deduct and withhold from the taxes otherwise due from him on his quarterly tax return, one per cent (1%) thereof to reimburse himself for the cost of collecting the tax. Provided, however, an additional two per cent (2%) deduction shall be allowed a taxpayer who makes prepayments of his tax liability based upon a reasonable estimate of his tax liability for the quarter in which the prepayment is made. In order for the taxpayer to be entitled to the additional two per cent (2%) discount, the prepayment must be made on or before the fifteenth day of the second month of the calendar quarter for which the payment is made.

"A taxpayer making a prepayment of his tax as provided for in this paragraph is not relieved from the filing of quarterly returns as provided for elsewhere in this Chapter. At the time the taxpayer files his quarterly return showing his actual tax liability any prepayments made by the taxpayer shall be credited against his tax liability; in the event that there is tax liability owed by the taxpayer in excess of the prepayment, the taxpayer shall remit such excess at the time of filing his quarterly return and from such excess shall deduct and

withhold one per cent (1%) of the amount of the excess. If the tax liability of the taxpayer is less than the prepayment of taxes, the excess of the prepayment shall be recorded as a credit against future tax liability or refunded to the taxpayer as provided for in Article 20.10.

"In the event the payment of any taxes due under the applicable provisions of this Chapter are not paid within the time required, or in the event that the taxpayer does not file reports when due as provided by the provisions of this Chapter, the taxpayer forfeits his claim to any discount, including any discount that might have been taken by a taxpayer at the time of making a prepayment.

"(F) Return Periods; Quarterly Periods Other than Calendar Quarters. The Comptroller, if he deems it necessary in order to insure payment to or facilitate the collection by the State of the amount of taxes due, may require returns and payment of the amount of said taxes for quarterly periods other than calendar quarters, in the case of a particular seller, retailer or purchaser, as the case may be, or for other than quarterly periods.

"(G) Delivery of Return: Remittance. The person required to file the return shall deliver the quarterly return together with a remittance of the net amount of the tax due to the office of the Comptroller.

"(H) Penalties for Failure to Pay or Report. If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the tax as imposed herein when said report or payment is due, he shall forfeit five percent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five per cent (5%). Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum, beginning sixty (60) days from the date due."

"Art. 20.06 Deficiency Determination.

"(A) Recomputation of Tax; Determination on Discontinuance of Business.

"(1) If the Comptroller is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the State by any person, he may compute and determine the

amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or which may come into his possession.

"(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in paragraph (D) of this section as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this Chapter.

"(B) Penalty for Fraud, Intent to Evade. If any part of a deficiency for which a deficiency determination is made is due to fraud or an intent to evade this Chapter or authorized rules and regulations, a penalty of 25 per cent of the amount of the determination shall be added thereto.

"(C) Notice of Comptroller's Determination; Service.

"(1) The Comptroller shall give to the retailer or person storing, using or consuming tangible personal property written notice of his determination.

"(2) The notice may be served personally or by mail; if by mail, the notice shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the Comptroller.

"(3) In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit in the United States post office.

"(D) Time Within Which Notice of Deficiency Determination to be Mailed; Consent to Later Mailing of Notice.

"(1) Every notice of a deficiency determination shall be personally served or mailed within 3 years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within 3 years after the return if filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed or personally served within 5 years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

"(2) The limitation specified in this

Article does not apply in case of a limited sales tax proposed to be determined with respect to sales of property for the storage, use or other consumption of which notice of a deficiency determination has been or is given pursuant to paragraphs (C), (D) (1) and (G) of this Article, and paragraph (B) of Art. 20.07. The limitation specified in this Article does not apply in case of an amount of use tax proposed to be determined with respect to storage, use or other consumption of property for the sale of which notice of a deficiency determination has been or is given pursuant to paragraphs (C), (D) (1), and (G) of this Article, and paragraph (B) of Art. 20.07 and to subsection 1 of this Article.

"(3) If, before the expiration of the time prescribed in this Article for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

"(E) Determination if No Return Made; Estimate and Computation; Discontinuance of Business.

"(1) If any person fails to make a return, the Comptroller shall make an estimate of the amount of the receipts of the person, or, as the case may be, of the amount of the total sales, rent or lease price of tangible personal property sold, rented or leased or purchased, by the person, the storage, use or other consumption of which in this State is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Comptroller's possession or may come into his possession. Upon the basis of this estimate, the Comptroller shall compute and determine the amount required to be paid to the State, adding to the sum thus arrived at a penalty equal to Ten per cent (10%) thereof. One or more determinations may be made for one or for more than one period.

"(2) When a business is discontinued, a determination may be made at any time thereafter within the periods



specified in paragraph (D) of this Article as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this Chapter.

"(F) Offsets; Computation; Interest.

"(1) In making a determination, the Comptroller may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

"(2) The interest on underpayments shall be computed in the manner set forth in paragraph (G) of Art. 20.08.

"(G) Notice of Estimate, Determination and Penalty; Service. Promptly after making his determination, the Comptroller shall give to the person written notice of the estimate, determination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

"Art. 20.07. Jeopardy Determinations.

"(A) Jeopardy Determination; When Made; Due Date. If the Comptroller believes that the collection of any tax or any amount of tax required to be collected and paid to the State or the amount of any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is due and payable immediately.

"(B) Nonpayments; Finality of Determination. If the amount specified in the determination is not paid within Twenty (20) days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the Twenty (20) days unless a petition for redetermination is filed within the Twenty (20) days, a delinquency penalty of Ten per cent (10%) of the tax or amount of the tax and the interest provided in paragraph (G) of Art. 20.08 shall attach to the amount of the tax or the amount of the tax required to be collected.

"(C) Petition for Redetermination; Deposit of Security. The person against whom a jeopardy determination is made may petition for the

redetermination thereof pursuant to paragraphs (A) through (G) of Art. 20.08. He shall, however, file the petition for redetermination with the Comptroller within 20 days after the service upon him of notice of determination. The person shall also within the 20-day period, deposit with the Comptroller such security as the Comptroller may deem necessary to insure compliance with this Chapter. The security may be sold by the Comptroller in the manner prescribed by paragraph (A), Art. 20.09.

"Art. 20.08. Petition for Redetermination.

"(A) Time to File.

"(1) Any person against whom a determination is made under paragraphs (A) through (G) of Art. 20.06, or any person directly interested, may petition for a redetermination within 30 days after service upon the person of notice thereof.

"(2) If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

"(B) Oral Hearing; Notice; Continuances.

"(1) If a petition for redetermination is filed within the 30-day period, the Comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 20 days notice of the time and place of the hearing.

"(2) The Comptroller may continue the hearing from time to time as may be necessary.

"(C) Increase, Decrease and Amount of Determination. The Comptroller may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Comptroller at or before the hearing; upon which the petitioner shall be entitled to a 30-day continuance of the hearing to allow him to obtain and produce further evidence applicable to the items upon which the increase is based.

"(D) Order of Comptroller on Petition for Redetermination; Finality of Order. The order or decision of the Comptroller upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

"(E) Due Date of Determinations; Penalties. All determinations made by the Comptroller under paragraphs

(A) through (G) of Art. 20.06 are due and payable 20 days after the time they become final. If they are not paid when due and payable, a penalty of Ten per cent (10%) of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

"(F) Service of Notice. Any notice required by paragraph (A) through (E) of this Article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

"(G) Interest for Failure to Pay Tax; Amount; Rates. Any person who fails to pay any tax to the State or any amount of tax required to be collected and paid to the State within the time required, shall pay, in addition to the tax or amount of tax, interest at the rate of six per cent (6%) per annum, from the date on which the tax or the amount of tax required to be collected became due and payable to the State until the date of payment.

"Art. 20.09. Collection of Tax.

"(A) Notice of Delinquency to Persons Holding Credits or Property of Delinquent; Transfer or Disposition of Property or Debt after Notice; Bank Deposits.

"(1) If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the Comptroller may, not later than 3 years after the payment became delinquent or within 3 years after the last recording of a lien, give notice thereof personally or by registered mail to all persons, including any officer or department of the State or any political subdivision or agency of the State, having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent, or person owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Comptroller.

"(2) After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal prop-

erty, or debts in their possession or under their control at the time they received the notice until the Comptroller consents to a transfer or disposition, or until 60 days elapse, after receipt of the notice, whichever period expires earlier.

"(3) All persons so notified shall, within 20 days after receipt of the notice, advise the Comptroller of all such credits, other personal property, or debts in their possession, under their control, or owing by them.

"(4) If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, in order to be effective, shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held.

"(5) If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid, he shall be liable to the State for any indebtedness due under this Chapter from the person with respect to whose obligation the notice was given.

"(B) Action for Collection of Tax, Penalties, Interest; Limitation. At any time within 3 years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within 3 years after the delinquency of any tax or any amount of tax required to be collected, or within 3 years after the last recording of a lien, the Comptroller may bring an action in the courts of this State, or any other State, or of the United States, in the name of the people of the State of Texas, to collect the amount delinquent together with penalties and interest.

"(C) Attorney General to Prosecute Action. The Attorney General shall prosecute the action, and the Rules of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals shall be applicable to the proceedings.

"(D) Issuance of Writ of Attachment Without Bond, Affidavit. In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment is required.

"(E) Evidentiary Effect of Delinquency Certificate. In the action a certificate by the Comptroller showing the delinquency shall be prima facie evidence of the determination of the tax or the amount of the tax, of the delinquency of the amounts set forth, and of the compliance by the Comptroller with all the provisions of this Chapter in relation to the computation and determination of the amounts.

"(F) Action for Use Tax; Manner of Service of Process. In any action relating to the use tax brought under this Chapter, process may be served according to the Rules of Civil Procedure or may be served upon any agent or clerk in this State employed by any retailer in a place of business maintained by the retailer in this State. In the latter case, a copy of the process shall forthwith be sent by registered mail to the retailer at his principal or home office.

"(G) Judgment for Taxes.

"(1) Comptroller May Sue. If any amount required to be paid to the State under this Chapter is not paid when due, the Comptroller may within three (3) years after the amount is due, file in a court of competent jurisdiction in Travis County, Texas, or any county where the person owing the tax may be a resident or have a place of business, an action for recovery of such tax, together with any penalties and interest. Such action shall be in the form of an action for debt, and the certificate of the Comptroller or his duly authorized agent that the tax is due, specifying the amount due together with penalty and interest, shall be prima facie evidence of the justness and correctness of such claim by the State. Service may be had according to the provisions of Art. 20.09, paragraph (F) of this Chapter.

"(2) Judgments May Be Abstracted. Any judgment obtained in favor of the State by an action brought under this Article may be filed for record with the county clerk of any county in this State and when so filed, shall constitute a lien upon all of the real property in the county owned by the person named as defendant in the judgment or thereafter acquired by him. Such lien to have the force and effect of a judgment lien for ten (10) years from the date of judgment unless sooner released or discharged.

"(3) Release. Upon payment in full

of the amount of any judgment obtained under this Article, the Comptroller may issue a release of any such judgment lien. Prior judgments for taxes and penalties shall not bar subsequent suit by the Comptroller for additional taxes, or penalties or interest accruing after any such prior judgment, provided such suits are instituted within three years after such taxes are due.

"(4) Execution. Execution may issue upon any judgment obtained under this Article in the same manner as execution may issue in other judgments for debt, and sale shall be held under such execution as prescribed in the Rules of Civil Procedure and Statutes of this State.

"(H) Seizure and Sale.

"(1) Seizure and Sale. At any time within three (3) years after any person is delinquent in the payment of any amount, the Comptroller may forthwith collect the amount in the following manner: The Comptroller shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties on account of the seizure and sale. Any seizure made to collect a sales tax due shall be only of property of the vendor not exempt from execution under the laws of this State.

"(2) Notice of Sale. Notice of the sale and the time and place thereof shall be given to the delinquent person in writing at least 20 days before the date set for the sale in the following manner: The notice shall be enclosed in an envelope addressed to the person, in case of a sale for limited sales tax due, at his last known address or place of business, and in case of a sale for use taxes due, at his last known residence or place of business in this State. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least ten (10) days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three (3) public places in the county twenty (20) days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the

delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with the law and the notice.

"(3) Bill of Sale; Deed. At the sale, the Comptroller shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

"(4) Disposition of Proceeds. If upon the sale the moneys received exceed the total of all amounts, including interest, penalties, and costs due the State, the Comptroller shall return the excess to the person liable for the amounts and obtain his receipt. If any person having an interest in or lien upon the property files with the Comptroller prior to the sale notice of his interest or lien, the Comptroller shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Comptroller shall deposit the excess moneys with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns.

"(I) Payment on Termination of Business and Successor's Liability.

"(1) Withholding by Purchaser. If any vendor liable for any amount under this Chapter sells out his business or stock of goods or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Comptroller showing that it has been paid or a certificate stating that no amount is due.

"(2) Liability of Purchaser; Release. If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60

days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than 90 days after receiving the request, the Comptroller shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Comptroller of the amount that must be paid as a condition of issuing the certificate. Failure of the Comptroller to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the vendor sells out his business or stock of goods or at the time that the determination against the vendor becomes final whichever event occurs the later.

"Art. 20.10. Overpayments and Refunds.

"(A) Certification of Excess Amount Collected; Credit and Refund. If the Comptroller determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Comptroller shall set forth that fact in his records and the excess amount collected or paid may be credited on any amount then due and payable from the person under this Chapter. Any balance may be refunded to the person by whom it was paid, or his successors, administrators or executors.

"(B) Claims for Refund, Credit: Limitation.

"(1) No refund shall be allowed unless a claim therefor is filed with the Comptroller by the person who overpaid the tax or his attorney, assignee, executor, or administrator, within 3 years from the last day of the month following the close of the quarterly period for which the overpayment was made, or within six months after any determination becomes final under paragraphs (A) through (G) of Article 20.06 or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires the later.

"(2) No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Comptroller within such period, or

unless the credit relates to a period for which a waiver is given pursuant to paragraph (D) under Article 20.06.

"(C) Credit or Refund for Use Tax: Reimbursement of Retailer for Limited Sales Tax. No credit or refund of any amount paid pursuant to paragraph (A) through (L) of Article 20.03 shall be allowed on the ground that the storage, use or other consumption of the property is exempted under Article 20.04 unless the person who paid the amount reimburse his retailer for the amount of the limited sales tax imposed upon his vendor with respect to the sale of the property and paid by the vendor to the State.

"(D) Claim for Refund, Credit: Form: Contents. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

"(E) Effect of Failure to File Claim: Waiver. Failure to file a claim within the time prescribed in paragraph (B) of this Article constitutes a waiver of any demand against the State on account of overpayment.

"(F) Notice of Disallowance of Claim: Service. Within 30 days after disallowing any claim in whole or in part, the Comptroller shall serve notice of his action on the claimant in the manner prescribed for service of notice of a deficiency determination.

"(G) Injunction: Other Process to Prevent Tax Collection Prohibited. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this State or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected.

"(H) Action for Refund: Claim as Condition Precedent. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

"(I) Action for Refund; Time to Sue; Venue of Action; Waiver.

"(1) Within 90 days after the mailing of the notice of the Comptroller action upon a claim filed pursuant to this Chapter, the claimant may bring an action against the Comptroller on the grounds set forth in the claim in a court of competent jurisdiction in Travis County, Texas, for recovery of the whole or any part

of the amount with respect to which the claim has been disallowed.

"(2) Failure to bring action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayment.

"(J) Right of Action on Failure to Mail Notice. If the Comptroller fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may, prior to the mailing of notice by the Comptroller of his action on the claim, consider the claim disallowed and bring an action against the Comptroller on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

"(K) Judgment for Plaintiff; Credits; Refund of Balance.

"(1) If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited as follows:

"(a) If the judgment is for a refund of taxes, it shall be credited on any limited sales or use tax or amount of use tax due from the plaintiff.

"(b) If the judgment is for a refund of use taxes, it shall be credited on any use tax or amount of use tax due from the plaintiff under this Chapter.

"(2) The balance of the judgment shall be refunded to the plaintiff.

"(L) Allowance of Interest. In any judgment, interest shall be allowed at the rate of 6 per cent per annum upon the amount found to have been illegally collected from the date of payment of the amount to date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Comptroller.

"(M) Recovery of Erroneous Refunds; Action; Jurisdiction and Venue. The Comptroller may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought, within 1 year from the date of refund or credit, in the name of the State, in a court of competent jurisdiction in the county in which the person involved is located.

"(N) Change of Venue in Action to Recover Erroneous Refund. The action shall be tried in the county in which the person involved is a resident unless the court with the consent

of the Attorney General orders a change of place of trial.

"(O) Attorney General to Prosecute Action for Recovery of Erroneous Refund. The Attorney General shall prosecute the action, and the provisions of State law and the Rules of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

"Art. 20.11. Administration.

"(A) Enforcement by Comptroller: Rules and Regulations.

"(1) The Comptroller shall enforce the provisions of this Chapter and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this Chapter.

"(2) The Comptroller may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

"(B) Employment of Accountants, Investigators and Other Persons: Delegation of Authority. The Comptroller may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this Chapter, and may delegate authority to his representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by this Chapter.

"(C) Records to be Kept by Sellers, Retailers and Others.

"(1) Every seller, every retailer, and every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the Comptroller may reasonably require.

"(2) Every such seller, retailer or person shall keep such records for not less than 3 years from the making of such records unless the Comptroller in writing sooner authorizes their destruction.

"(D) Examination of Records: Investigation of Business. The Comptroller or any person authorized in writing by him, may examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain

and determine the amount required to be paid.

"(E) Taxpayer's Right to Keep Records out of State. The taxpayer shall have the right to keep or store his records at a point outside this State, but, if the Comptroller wishes to examine said records, the taxpayer shall either bring the records into the State for such examination, or shall reimburse the Comptroller for the increased expense of making the examination at the out-of-state location.

"(F) Reports for Administering Use Tax: Contents. In administration of the use tax, the Comptroller may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property, the storage, use or other consumption of which is subject to the tax. The report shall:

"(1) Be filed when the Comptroller requires.

"(2) Set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the Comptroller may require.

"(G) Disclosure of Information Unlawful: Examination of Records.

(1) It shall be a misdemeanor for any member or official or employee of the Comptroller to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Comptroller.

However, the Comptroller may, by general or special order, authorize examination by other State officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person of the records maintained by the Comptroller under this Chapter.

Nothing herein contained shall be construed to prevent: The delivery to a taxpayer or his duly authorized representative, of a copy of any report or other paper filed by him pursuant to the provisions of this Chapter; the

publication of statistics so classified as to prevent the identification of a particular report and the items thereof; the use of such records, reports, or information secured, derived, or obtained by the Attorney General or the Comptroller under the terms of this Chapter in any action against the same taxpayer for a penalty or any tax due under any provision of this Chapter.

"(2) Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

#### Art. 20.12. Violations.

"(A) Penalty for Engaging in Business as Seller Without Permit. A person who engages in business as a retailer in this State without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, is guilty of a misdemeanor, and such person shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction. Each day of such operation shall constitute a separate offense.

"(B) Penalty for Improper Use of Resale Certificate. Any person who gives a resale certificate to the seller for property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and such person shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction.

"(C) Penalty for Failure to Make Return, Furnish Data. Any retailer or other person who refuses to furnish any return required to be made, or who refuses to furnish a supplemental return or other data required by the Comptroller, shall be guilty of a misdemeanor, and shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction.

"(D) Penalty for Other Violations. Any violation of this Chapter, except as otherwise provided, is a misdemeanor, and any person shall, when found guilty of such violation, be fined not more than Five Hundred Dollars (\$500) for each violation.

"(E) Statute of Limitations. Any

prosecution for violation of any of the penal provisions of this Chapter shall be instituted within 3 years after the commission of the offense.

"Art. 20.13. Disposition of Proceeds. All fees, taxes, interest and penalties imposed, and all amounts of tax required to be paid to the State under this Chapter shall be paid to the Comptroller in the form of remittances payable to the Comptroller of Public Accounts of Texas. The Comptroller shall remit all fees, taxes, interest and penalties collected under this Chapter to the State Treasurer to be deposited in the State Treasury to the credit of the General Revenue Fund.

"Art. 20.14. Remedies of State are Cumulative. The remedies of the State provided for in this Chapter are cumulative and no action taken by the Comptroller or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this Chapter.

"Art. 20.15. Comptroller's Authority. In all proceedings under this Chapter the Comptroller may act for and on behalf of the people of the State of Texas.

"Art. 20.16. Res Judicata. In the determination of any case arising under this Chapter the rule of res judicata is applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.

"Art. 20.17. Tax Suit Comity. The courts of this State shall recognize and enforce liabilities for sales and use taxes lawfully imposed by any other state, provided that such other state extends a like comity to this State.

#### "Article II

Section 1. That Article 12.02 of Title 122A, Taxation—General, Revised Civil Statutes of Texas, is amended to read as follows:

"Art. 12.02. Allocation Formula. Each corporation liable for payment of a franchise tax shall determine the portion of its entire taxable capital taxable by the State of Texas by multiplying same by an allocation percentage which shall be the percentage relationship which the gross receipts from its business done in Texas bear to the total gross receipts of the corporation from its entire business.

For the purpose of this Article, the

term "gross receipts from its business done in Texas" shall include:

(a) Sales of tangible personal property located within Texas at the time of the receipt of or appropriation to the orders where shipment is made to points within this State,

(b) Services performed within Texas,

(c) Rentals from property situated, and royalties from the use of patents or copyrights, within Texas, and

(d) All other business receipts within Texas.

For the purpose of this Article, the term "total gross receipts of the corporation from its entire business" shall include all of the proceeds of all sales of the corporation's tangible personal property, all receipts from services, all rentals, all royalties and all other business receipts, whether within or outside of Texas. Provided, however, that, as to the sales of investments and capital assets, the term "total gross receipts of the corporation from its entire business" shall include only the net gain from such sales.

Section 2. That Article 12.21 of Title 122A, Taxation—General of the Revised Civil Statutes of Texas, 1925, be amended to read as follows:

"Art. 12.21. Additional Franchise Tax for Years Ending April 30, 1961, April 30, 1962, April 30, 1963 and April 30, 1964.

"(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, and from May 1, 1962, to and including April 30, 1963, and from May 1, 1963, to and including April 30, 1964, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01 of this Chapter for the aforesaid periods by 22.22 per cent.

"(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and

from May 1, 1961, to and including April 30, 1962, and from May 1, 1962, to and including April 30, 1963, and from May 1, 1963, to and including April 30, 1964, pay an additional franchise tax in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Additional Tax Shall Be
\$ 0.00	\$ 20,000.00	\$ 7.50
20,000.00	40,000.00	12.00
40,000.00	60,000.00	20.00
60,000.00	80,000.00	30.00
80,000.00	90,000.00	40.00
90,000.00	110,000.00	45.00
110,000.00	120,000.00	50.00
120,000.00	130,000.00	55.00
130,000.00	140,000.00	60.00
140,000.00	150,000.00	65.00

"(3) The additional franchise tax levied by this Article shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

"(4) The State Comptroller of Public Accounts shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

"(5) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this State.

"(6) The additional franchise tax levied by this Article shall expire on April 30, 1964."

#### "Article III

Section 1. Article 13.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as enacted by Chapter 13, Acts of the 56th Legislature, Third Called Session, 1959, is amended to read as follows:

"Art. 13.02. Amount of Tax.

"(1) Every 'owner' who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any 'coin-operated machine' shall pay, and there is hereby levied on each 'coin-operated machine,' as defined herein in Article 13.01, except as are exempt herein, an annual occupation tax of Ten Dollars (\$10.00).

"(2) Provided that nothing herein shall prevent the 'operator' of such machine from paying the tax levied in this Chapter for the account of



the 'owner' but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this Chapter including the keeping of records required in this Chapter.

Section 2. Article 13.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as enacted by Chapter 13, Acts of the 56th Legislature, Third Called Session, 1959, is amended to read as follows:

"Art. 13.03. Exemptions from Tax.

"Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax and 'service coin-operated machines' as that term is defined, are expressly exempt from the tax levied therein, and the other provisions of this Chapter."

#### "Article IV

Section 1. That Section 19 of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as last amended by Section 2 of Chapter 108, Acts of the 54th Legislature, Regular Session, 1955, be amended so as to hereafter read as follows:

"Sec. 19. Fees for License. The fees as provided for in this Act shall be as follows:

"For a chauffeur's license, Six Dollars (\$6.00); for a commercial operator's license Four Dollars and Fifty Cents (\$4.50); and for an operator's license, Three Dollars (\$3.00)."

Section 2. That Section 15 of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as last amended by Section 2(a) of Chapter 1, Acts of the 56th Legislature, Regular Session, 1959, be amended so as to hereafter read as follows:

"All fees and charges required by this Act and collected by any officer or agent of the Department shall be remitted without deduction on Monday of each week to the Department at Austin, Texas, and Two Dollars (\$2) derived from each chauffeur's license fee, and One Dollar and Fifty Cents (\$1.50) derived from each commercial operator's license fee, and One Dollar (\$1) derived from each operator's license fee shall be deposited in the State Treasury in the General Revenue Fund of the State, and the remainder of all fees so collected shall be deposited in the State Treasury in

a fund to be known as the Operator's and Chauffeur's License Fund.

"Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1 of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove."

#### "Article V

Section 1. Article 9.25 of Chapter 9, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session, 1959, is hereby amended by adding thereto the following paragraph:

"All receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year."

#### "Article VI

Section 1. Article 11.03, Chapter 11 of Title 122A, Taxation—General, Revised Civil Statutes of Texas, as enacted by the Third Called Session, 1959, Acts of the 56th Legislature, is hereby amended to read as follows:

"Art. 11.03. Gas, Electric Light, Power, Water Works or Telephone Lines or Telephones.

"(1) Each individual, company, corporation, or association owning, operating, managing, or controlling any gas, electric light, electric power, water works, water and light plant, or telephone lines or telephones, located within any incorporated town or city in this State, and used for local sale, distribution, or service in said city or town, and charging for such local sale, distribution or use of gas, electric lights, electric power, water, or telephone lines or telephones, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the

Comptroller showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such local sale, distribution, or use of gas, electric lights, electric power, water, or telephone lines or telephones, for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any such incorporated town or city of more than one thousand (1,000) inhabitants and less than two thousand, five hundred (2,500) inhabitants, according to the last Federal Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to .581% of said gross receipts, as shown by said report; and for any incorporated town or city of more than two thousand, five hundred (2,500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.07% of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.997% of said gross receipts, as shown by said report. Provided that nothing herein shall apply to any such gas, electric light, power or water works, water and light plant, or telephone lines or telephones, within this State, owned and operated by any city or town, nor to any county or water improvement or conservation district or utility owned and operated by a cooperative, non-profit, membership corporation.

"(2) Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation, or association, and dis-

tributed by another, the tax shall be paid by the distributor alone.

"(3) No city or other political subdivision of this State, by virtue of its taxing power, proprietary power, police power or otherwise shall impose an occupation tax or charge of any sort upon any person, corporation, or association required to pay an occupation tax under this Article. Nothing in this Article shall be construed as affecting in any way the collection of ad valorem taxes authorized by law; nor impairing or altering in any way the provisions of any contracts, agreements, or franchises now in existence, or hereafter made between a city and a public utility, relating to payments of any sort to a city. Nothing in this Article shall be construed as prohibiting an incorporated city or town from making a reasonable charge, otherwise lawful, for the use of its streets, alleys, and public ways by a public utility in the conduct of its business, and each such city shall have such right and power; but any such charges, whether designated as rentals or otherwise, and whether measured by gross receipts, units of installation, or in any manner, shall not in the aggregate exceed the equivalent of two per cent (2%) of the gross receipts of such utility within such municipality derived from the local sale, distribution, or use of gas, electric energy, water, or telephone lines or telephones. Any special taxes, rentals, contributions, or charges accruing after the effective date of this Act, under the terms of any pre-existing contract or franchise, against any utility paying an occupation tax under this Article, when paid to any such city, shall be credited on the amount owed by such public utility on any charge or rental imposed for the use of streets, alleys, and public ways, levied by ordinance, and accruing after the effective date of this Act; provided that where valid ordinances have been enacted heretofore by cities imposing a charge or rental in excess of two per cent (2%) of the gross receipts of such utilities, nothing herein shall be construed so as to prohibit the collection of such sum as may be due said cities thereunder from the date of said ordinances up to the time this Article shall become effective.

"(4) And provided further that utilities paying an occupation tax un-

der this Article shall not hereafter be required to pay the license fee imposed in Article 5a, House Bill No. 18, Chapter 400, Acts of Forty-fourth Legislature, for the privilege of selling gas and electric appliances and parts for the repairs thereof, in towns of three thousand (3,000) or less in population according to the next preceding Federal Census.

Section 2. Article 11.06, Chapter 11 of Title 122A, Taxation—General, Revised Civil Statutes of Texas, as enacted by the Third Called Session, 1959, Acts of the 56th Legislature, shall be, and the same is, hereby repealed."

Section 3. Amend Article 11.02, Chapter 1, Title 122A, Taxation—General, Revised Civil Statutes, 1925, to read as follows:

"Art. 11.02. Telegraph Companies.

"(1) Each individual, company, corporation, or association owning, operating managing or controlling any telegraph lines in this State, or owning operating controlling or managing what is known as wireless telegraph stations, for the transmission of messages or aerograms, and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, showing the gross amount received from all business within this State during the preceding quarter, in the payment of telegraph or aerogram charges, including the amount received on full rate messages and aerograms, and half rate messages and aerograms, and from the lease or use of any wires or equipment within the State during said quarter excepting all business transacted for and on behalf of the agencies of the United States Government, for which rates are prescribed by the Postmaster General. Said individual, company, corporation, or association, at the time of making said report for any incorporated town or city of more than one thousand (1,000) inhabitants and less than two thousand, five hundred (2,500) inhabitants, according to the last Federal census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to .581% of said gross receipts, as shown by said report; and for any incorporated town or city of more than two thousand, five hundred (2,500) inhabit-

ants and less than ten thousand (10,000) inhabitants, according to the last Federal census next preceding the filing of said report, the said individual, company, corporation or association at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.07% of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last Federal census next preceding the filing of said report, the said individual, company, corporation or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.997% of said gross receipts, as shown by said report.

"(2) No city or other political subdivision of this State, by virtue of its taxing power, police power, or otherwise shall impose an occupation tax or charge of any sort for the privilege of doing business upon any person, corporation or association required to pay an occupation tax under this Article, provided that nothing in this Article shall be construed to prohibit the collection of any tax now imposed by a franchise, and provided further that this Article shall not affect any contracts now in existence or hereafter made between a city and the holder of a franchise."

#### ARTICLE VII

##### Dedicated Reserve Gas Tax

Section 1. That Title 122A, Chapter 3, Revised Civil Statutes of Texas, 1925, be amended by inserting a new Article after Article 3.10, denominated Article 3.11, to read as follows:

"Article 3.11. Dedicated Reserve Tax.

"(1) Declaration of Policy.

"It is the policy of this State to obtain, as near as may be consistent with a fair and equitable tax policy, a tax return to the State of not less than one cent (1¢) per MCF on each MCF of natural gas produced and saved from the earth and waters of this State. The same is deemed necessary.

"I. To derive a reasonable State revenue from the trillions of cubic feet of gas removed from the earth and waters of the State each year, and

"II. To tax equitably all of those persons integrally engaged in the occupation of removing such gas, so that one associated group of them will not derive a windfall by virtue of a very small tax burden on each thousand cubic feet of gas produced by such others.

"It is further the policy of this State, in order to promote conservation and to distribute equitably the burden of natural resources taxation, to recognize and clarify fully by statute the relation between various persons engaged in the occupation of producing natural gas so that the taxpayer in each instance may be identified clearly, and so that all persons so engaged in the occupation of production will bear equitably the taxes imposed in connection with the severance of gas from Texas soil.

"Pursuant to this policy it is recognized that contractual relations exist in such natural gas production occupation between several definable groups, all engaged integrally in such occupation of severance of natural gas from the soil and all having such a direct and beneficial interest in the production of gas that for the purpose of taxation they may be classified as producers of gas. It is the policy of the State of Texas to recognize that all such persons, integrally engaged in the occupation of severance of natural gas from the soil-producers, severance producers and dedicated reserve producers, have a taxable interest in production of gas in Texas.

"(2) Definitions.

"The definitions contained in Article 3.04, insofar as applicable, shall govern the meanings of the terms used in this Article. In addition, the following definitions are specifically applicable to this Article.

"(a) 'Severance producers' means any person owning, controlling, managing or leasing any gas well and/or any person who produces in any manner any gas by taking it from the earth or waters of this State, and shall include any person owning any royalty or other interest in gas or its value, whether produced by him, or by some other person in his behalf, either by lease or contract or otherwise, when such person producing gas is in contractual relation with the dedicated reserve producer (either directly, or, if a royalty or other holder of an interest in gas in place and thereby entitled to a fractional

share of the value of such gas in place, indirectly through the producer).

"(b) 'Dedicated reserve producer' means any person holding a written contract for a designated term specified therein which confers upon such person the right to take title to gas from particular lands, leases and reservoirs in this State and imposes upon a severance producer the duty to supply all or a designated quantity or portion of gas produced by that severance producer (or by that severance producer in conjunction with other severance producers) to the dedicated reserve producer at a fixed or determinable price.

"(c) 'Severance beneficiary' has the following meaning:

"I. In the case where there is in effect a dedicated reserve contract as to the gas in question, the term 'severance beneficiary' refers to the dedicated reserve producer.

"II. In the case where there is no dedicated reserve contract in effect as to the gas in question, the term 'severance beneficiary' refers to the producer.

"(d) 'Dedicated reserve contract' means any written contract for a designated term specified therein which confers upon a dedicated reserve producer the right to take title to gas from particular lands, leases and reservoirs in this State, and imposes upon a severance producer the duty to supply all or a designated quantity or portion of gas produced by that severance producer (or by that severance producer in conjunction with others) to the dedicated reserve producer at a fixed or determinable price.

"(e) I. Meaning of Residue Gas.

"A. As to gas from which liquefiable hydrocarbons are removed 'residue gas' means that constituent part of the whole quantity of gas removed from the earth and waters of this State which eventually constitutes the residue. The tax is applicable under the terms of this Article to such constituent part of the whole quantity of gas at the time when it, along with the associated gasoline or other liquefiable hydrocarbons, is actually severed from the earth and waters of this State.

"B. As to gas from which liquefiable hydrocarbons are not removed 'residue gas' means the entire quantity except that gas which is

"(i) injected into the earth, unless sold for such purpose;

"(ii) produced from oil wells with oil and lawfully vented or flared; or

"(iii) used for lifting oil, unless sold for such purpose.

"II. How measured.

"Such residue gas shall be measured by determining that portion of gas containing gasoline or other liquefiable hydrocarbons (that are to be removed or extracted at a plant by scrubbing, absorption, compression, or any other process) which is left after the application of such process and which flows through the outlet of such plant. In the event that such gas is processed in more than one such plant, the residue gas content shall be measured as that portion of the gas which flows through the outlet of the first plant.

"As to that gas which passes through a separator and which is not processed in a plant to remove or extract the gasoline or other liquefiable hydrocarbons, the residue gas content shall be measured as that portion of the gas remaining after its passage through such separator. In the event that such gas passes through more than one separator, the residue gas content shall be measured as that gas remaining after the passage through the first separator.

"As to that gas which passes through a drip or trap and which does not pass through a separator and which is not processed in a plant to remove or extract gasoline or other liquefiable hydrocarbons, the residue gas content shall be measured as that portion of the gas remaining after passage through such drip or trap. In the event that such gas passes through more than one drip or trap, then the residue gas content shall be measured as that portion of the gas remaining after its passage through the last drip or trap.

"As to that gas which passes through a meter and which does not pass through a drip or trap and which does not pass through a separator and which is not processed in a plant to remove or extract the gasoline or other liquefiable hydrocarbons, the residue gas content shall be measured as that portion of the gas remaining after it passes through such meter. In the event that such gas passes through more than one meter, then the residue gas content shall be meas-

ured as that gas which passes through the first meter.

"(f) 'MCF' means thousand cubic feet.

"(3) The Tax Herein Levied.

"(a) There is hereby levied, in addition to all other occupation taxes on the occupation of producing gas in Texas, an occupation tax on the business or occupation of producing gas within this State as a severance beneficiary at the rate of one cent per thousand cubic feet of residue gas produced, applicable at the time the said gas is severed from the earth or waters of this State, less the amount of tax paid per MCF under the provisions of Article 3.01 of this Chapter, computed in the following manner:

"In the case of all gas subject to the tax imposed by Article 3.01 there shall be ascertained the amount of tax in cents and fractions of a cent per thousand cubic feet paid to the State with respect to each quantity of such gas by virtue of the seven per cent of value tax provided in that Article. If such amount is less than one cent per MCF, then there shall be determined the difference between such amount and one cent (1¢) per MCF. Such amount multiplied by the quantity of the residue gas in question shall constitute the tax obligation of the severance beneficiary of such residue gas.

"(b) The above is subject to the following exceptions:

"(1) Without regard to any other provision of this Chapter, no producer producing natural gas from a newly discovered field shall be required to pay more than the seven per cent of the market value of gas therefrom produced until establishment of the first field rules for such field by the Railroad Commission or until the passage of six months from the date of the first discovery of natural gas in such field, whichever time shall be the shorter.

"(2) Without regard to any other provision of this Chapter, no producer or royalty owner of natural gas shall be required to pay more than the obligation provided under Article 3.01 of this Chapter unless he is also the severance beneficiary by virtue of selling such gas without a dedicated reserve contract.

"(3) Without regard to any other provision of this Chapter, no dedicated reserve producer operating one or more gasoline plants, shall, in re-

spect to the residue gas after processing in said plants, pay more under this tax than the difference between one cent (1¢) and the total of the amount of tax paid to the State with respect to each quantity of such gas by virtue of the seven per cent (7%) of value tax provided in Article 3.01 plus an amount of seven per cent (7%) of the value added to said gas by the process of manufacturing of the gasoline plant.

"(4) Collection of Tax.

"(a) The tax hereby levied shall be a liability of the severance beneficiary. It shall be his duty to keep accurate records of all gas produced and all matters reasonably necessary or pertinent, as determined by the Comptroller, for the calculation and collection of the tax. The severance beneficiary shall remit the tax additionally levied by this Article. The tax levied herein shall be due and payable at the office of the Comptroller of Public Accounts at Austin on the last day of the calendar month based on the amount of gas produced during the preceding calendar month. Each person liable for the tax imposed herein shall make and deliver to the Comptroller a verified report on forms furnished by the Comptroller showing such information as the Comptroller may deem necessary for the administration and enforcement of this Article. Such report shall be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied.

"(b) The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers, including severance producers and dedicated reserve producers, to determine whether the tax is being properly reported and paid. He or they shall have the power to enter on the premises of any taxpayer liable for a tax under this Act and any other premises necessary in determining the correct tax liability, and to examine any books or records and to secure any information directly or indirectly concerned, according to law, and to promulgate rules pertinent to the enforcement of this Article which rules shall have the effect of law. Before any division or allotment of the tax collected hereunder is made, .5% of the gross amount of that tax shall be set aside in the State Treasury for

the use of the Comptroller in the administration and enforcement of this Article; and so much of the said proceeds of a .5% of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby set aside for such purposes, subject to appropriation by the Legislature.

"(c) In the event that any taxpayer liable for a tax under this Act shall not file a report, the Attorney General shall have the right to enjoin such person until the delinquent tax is paid or said reports are filed, and venue is hereby fixed in Travis County.

"(d) All persons having an obligation imposed by this Article shall be subject to a penalty of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) for violation hereof, each day's violation constituting a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interest on all property used by them or in their business of producing or purchasing gas, and if any of them shall fail to remit the proper taxes, penalties and/or interest due, the Comptroller may employ personnel to ascertain the correct amount due, and the person violating any of the provisions of this Article shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due for the enforcement of all liens under this Article.

"(e) The provisions of Article 3.09 of this Chapter shall also be applicable to the enforcement of the provisions of this Article, and where the terms 'producer' or 'purchaser' are used in that Article, they shall be construed to be broad enough to include 'severance producer' and 'dedicated reserve producer,' as the case may be.

"(5) Allocation of Revenue.

"(a) The revenue derived under the provisions of this Article shall be allocated in the following manner:

"I. .5% for administration and enforcement as hereinabove provided;

"II. One-fourth (¼) of the net revenue shall be allocated to the Available School Fund;

"III. The remaining three-fourths

(%) shall be deposited in the Omnibus Tax Clearance Fund and shall be set aside for the purpose of transfer and allocation from the Omnibus Tax Clearance Fund to the Medical Assistance Fund as provided by Section 2 of Article XX of Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941, as amended, it being specifically provided that no portion of the revenues deposited to the Omnibus Clearance Fund by virtue of this Act shall be distributed or allocated to any other fund under the provisions governing the Omnibus Clearance Fund unless the needs of the Medical Assistance Fund have been met fully.

"(b) 'Revenue derived under the provisions of this Act' as used in this Section means such revenue as may be added by virtue of the provisions of this Article 3.11 to that revenue which would otherwise be obtained under other provisions of law.

"(6) In case two or more persons pay under protest challenging the constitutionality of any portion of this Article, the Attorney General shall, within thirty (30) days after the filing of the second protest, institute a suit for declaratory judgment in the District Court of Travis County, Texas. In order to expedite the decision in such case or cases, and also in suits filed by taxpayers under Article 1.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, any such cases involving the constitutionality of any portion of this Act shall be advanced to the top of the docket of any District or Appellate Court in which the cases might be filed or appealed.

"(7) The provisions of this Article are hereby declared to be non-severable; and if this Article or any portion thereof is declared invalid by a final judgment of a court of competent jurisdiction as to any severance beneficiary, it shall be invalid from the beginning as to the producer and all other severance beneficiaries. The provisions of this Article shall prevail over the provisions of the general severability clause at the end of this Act."

#### "Article VIII

"Section 1. That Chapter I of Acts, Fifty-sixth Legislature, Third Called Session, codified as Title 122A, Taxation—General of the Revised Civil Statutes of Texas, Chapters 1 and 23 be amended by the addition of

Articles 1.13 and 23.07 and that Articles 3.03, 4.03, 4.06, 5.03, 11.11, 12.09, 12.14, 12.15, 12.19, 17.04, 18.03, 19.02 and 21.04 of Chapters 3, 4, 5, 11, 12, 17, 18, 19, and 21 be amended so as to read:

"Article 1.13. Acceptance of Postmark, etc.

Any payment, report, annual report, return, declaration, statement, or other document required by any provision of this Title which requires such payment, report, annual report, return, declaration, statement, or other document to be filed or made on or before a specific date, shall be deemed sufficiently complied with if said payment, report, annual report, return, declaration, statement, or document shall bear a postmark which is dated on or before the date required for such payment, report, annual report, return, declaration, statement, or document to be filed or made.

"Article 3.03. Records and Payment.

(1) The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of each such producer to keep accurate records in Texas of all gas produced, making monthly reports as hereinafter provided.

(2) The purchaser of gas shall pay the tax on all gas purchased and deduct the tax so paid from the payment due the producer or other interest holders, making such payment so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer; such moneys so deducted from payments due producers for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by said purchaser, and shall be remitted to the State Treasurer in accordance with the terms and provisions of this Act; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased.

(3) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each such producer shall make and deliver to the Comptroller a report on forms prescribed by the Comptroller show-

ing the gross amount of gas produced, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, the correct name and address of the first purchaser of said gas, and such other information as the Comptroller may desire; such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied. In no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in the event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such a purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make such payment and shall be entitled to reasonable attorney's fees and court costs incurred by legal action.

(4) Provided, that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified such payment shall become delinquent and a penalty of Five per cent (5%) of the amount of the tax shall be added, and after the first thirty (30) days shall be forfeited an additional Five per cent (5%) of such tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due.

(5) The tax herein levied shall be borne ratable by all interested parties, including royalty interests; and producers and/or purchasers of gas are hereby authorized and required to withhold from any payment due interested parties, the proportionate tax due and remit the same to the Comptroller.

"Article 4.03. Primary Liability; Mode of Payment; Refunds; Penalties.

(1) The tax herein imposed on the producing of crude petroleum shall be the primary liability of the producer as hereinbefore defined, and every person purchasing crude petroleum from the producer thereof

and taking delivery thereof at the premises where produced shall collect said tax imposed by this Chapter from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Chapter, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending lawsuit in the State of Texas, or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or the University of Texas and any oil producer.

(2) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any taxpaying period either on the account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(3) The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(4) The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it relieve any subsequent purchaser from the payment of same, where the first purchaser does not account for and pay said tax, and the State shall have a lien on all of the oil produced in Texas in the hands of the producer, the first purchaser and any subsequent purchaser to secure the payment of the tax, and it shall be the duty of every person purchasing oil produced in Texas to satisfy himself or itself that the tax on said oil has been or will be paid by the persons primarily liable therefor.

(5) If the oil produced by said producer is not sold during the month in which it is produced, then said producer shall pay the tax at the same



rate and in the same manner as if said oil were sold during said month. In such case, however, the working interest operator may pay such tax and deduct it from the interest of the other interest holders.

(6) The tax herein levied shall be borne ratably by all interested parties, including royalty interest, and producers and/or purchasers of oil are hereby authorized and required to withhold from any payment due interested parties the proportionate tax due.

(7) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports as hereinafter provided.

(8) The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Provided, that if oil produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the same manner as if said oil were sold.

(9) The tax levied herein shall be paid monthly on the twenty-fifth day of each month on all oil produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorney's fees and court costs incurred by such legal action.

(10) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of Five per cent (5%) of the amount of the tax shall be added, and after the first

delinquent day shall be added an additional Five per cent (5%) of such tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of Six per Cent (6%) per annum beginning sixty (60) days from the date due.

"Article 4.06. Reports to Comptroller; Payment of Tax.

At the time of filing the reports herein required, the first purchaser shall pay to the Comptroller by legal tender or cashier's check, payable to the State Treasurer, the tax herein required to be paid. Failure to pay said tax on the twenty-fifth day of the month immediately following shall cause said to become delinquent and a penalty of Five per cent (5%) of the amount of said tax shall be added, and after the first thirty (30) days shall be forfeited an additional Five per cent (5%) of said tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall bear interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due.

"Article 5.03. Failure to Pay Tax, Penalties.

(1) Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Chapter within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount equal to Five per cent (5%) of the taxes due, and after the first thirty (30) days shall be forfeited an additional Five per cent (5%) of said tax; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of the State to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by whatever name or however organized, formed, or created.

(2) The Comptroller may require such other information and such additional reports as he may deem advisable.

**"Article 11.11. Penalty for Failure to Pay Tax.**

Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty (30) days from the date when said tax is required by this Chapter to be paid, shall forfeit and pay to the State of Texas a penalty of Five per cent (5%) upon the amount of such tax, and after the first thirty (30) days he shall forfeit an additional Five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of Six per cent (6%) per annum beginning sixty days from the date due.

**"Article 12.09. Initial Reports.**

Where a domestic corporation is chartered in this State or where a foreign corporation which has heretofore done no business in this State and is granted a permit to do business in Texas it shall file its first report within ninety (90) days from the expiration of one (1) year from the date such charter was filed or permit was granted, as the case may be, showing its condition as of the end of the month nearest the end of such first year.

**"Article 12.14. Failure to Pay Tax and File Reports.**

Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, or shall fail to file any report provided for in this Chapter, when the same shall become due, shall thereupon become liable to a penalty of Five per cent (5%) of the amount of such franchise tax due by such corporation, and if said report has not been filed or said taxes have not been paid within thirty (30) days from the date said report or taxes shall have become due, an additional Five per cent (5%) of such tax shall be forfeited; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due. If the reports required by Articles 12.08, 12.09 and 12.19 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before the thirtieth day after notice of delinquency is mailed

to such corporation, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, "right to do business forfeited" and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or permit of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation unless its right to do business in this State shall be revived as provided in this Chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which shall include all franchise taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners.

**"Article 12.15. Notice of Forfeiture.**

The Secretary of State shall notify each domestic and foreign corporation which may be or become subject to a franchise tax under the laws of this State, which has failed to file such report or pay franchise tax on or before the first day of May, that unless such overdue report is filed or such overdue tax together with said penalties thereon shall be paid within thirty (30) days of the mailing of such notice, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other

known place of business of such corporation. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and such notice and record thereof shall constitute legal and sufficient notice thereof for all purposes of this Chapter. Any corporation whose right to do business may have been forfeited, as provided in this Chapter, shall be relieved from such forfeiture by paying to the Secretary of State at any time prior to the forfeiture of the charter or permit of such a corporation as hereinafter provided, the full amount of the franchise taxes, penalties and interest due by it. When such taxes, penalties and interest shall be paid to the Secretary of State, he shall revive the right of the corporation to do business within the State by cancelling the words, "right to do business forfeited," upon his record and endorsing thereon the word "revived," and the date of such revival. If any domestic corporation or foreign corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this Chapter, shall fail to pay the Secretary of State within one hundred and twenty (120) days after such forfeiture, the amount necessary to entitle it to have its right to do business revived under the provisions of this Chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation, or of the permit of such foreign corporation. It shall be the duty of the Secretary of State, after such one hundred and twenty (120) days next following such forfeiture, to certify to the Attorney General the names of all corporations, domestic and foreign, whose right to do business within this State shall have been forfeited as hereinbefore provided, and upon receiving such certificate the Attorney General shall forthwith institute suit against such corporations under the provisions of Article 12.16 of this Chapter.

**"Article 12.19. Optional Use of Short Form Return.**

(1) In lieu of the franchise tax levied by Article 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars

(\$150,000) may elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 10,000.00	\$ 30.00
10,000.00	15,000.00	35.00
15,000.00	20,000.00	40.00
20,000.00	25,000.00	45.00
25,000.00	30,000.00	55.00
30,000.00	40,000.00	65.00
40,000.00	50,000.00	85.00
50,000.00	60,000.00	105.00
60,000.00	70,000.00	135.00
70,000.00	80,000.00	150.00
80,000.00	90,000.00	175.00
90,000.00	100,000.00	195.00
100,000.00	110,000.00	210.00
110,000.00	120,000.00	235.00
120,000.00	130,000.00	250.00
130,000.00	140,000.00	275.00
140,000.00	150,000.00	300.00

(2) "Total assets" as used in this Article means the total of all items reported or reportable as assets on the corporation's federal income tax return on the last day of the corporation's reporting period for federal income tax purposes. Said last day must fall within the twelve-month period preceding February 1st of the year in which the alternative franchise tax payable under this Article is to be paid.

(3) The Secretary of State shall prescribe the form of reports to be made by any corporation electing to pay its franchise tax under the provisions of this Article. The Secretary of State may require such reports to contain any or all information required under Articles 12.08, 12.09, 12.11, or 12.12 of this Chapter.

There shall be submitted with the report a signed copy of the corporation's federal income tax return for the period described in Subsection (2) of this Article. All franchise tax reports and income tax returns furnished to the Secretary of State under the provisions of this Article shall be confidential in nature and treated as such by the Secretary of State under the same conditions as provided in Article 12.10. The Secretary of State or the State Auditor may in the execution of this Article cause the books of any corporation electing to pay franchise taxes under this Article to be examined, whether such books be located within this State or any other State within the

United States. The Secretary of State may make any rules or regulations necessary for the administration of this Article.

"Article 17.04. License Period.

All licenses shall be so issued as to expire on the thirty-first day of December of each year. On or before the thirty-first day of December of each year every person, agent, receiver, trustee, firm, corporation, association, or co-partnership having a license shall apply to the Comptroller of Public Accounts for a renewal license for the calendar year next ensuing. All applications for renewal licenses shall be made on forms which shall be prescribed and furnished by the Comptroller of Public Accounts. Each such application for a renewal license shall be accompanied by a filing fee of One Dollar (\$1) for each store or mercantile establishment operated or to be operated and by the license fee as prescribed in Article 17.05 of this Chapter. This application shall be mailed to the Comptroller and accompanying the application and the application fee, shall be the amount of license due under the provision of this Chapter. Those applications not mailed and which require the visit of a member of the Comptroller's staff for the collection of the application fee or the license fee shall pay a service fee of Five Dollars (\$5) for each store. If the application is not received by the due date there shall be added to the amount of the license fee a penalty of Five per cent (5%) thereof, and after the first thirty (30) days an additional Five per cent (5%) of such fee shall be forfeited; said penalty shall never be less than One Dollar (\$1). Delinquent fees shall bear interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due.

"Article 18.03. Penalties.

If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars (\$25), and not more than One Thousand Dollars (\$1,000) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly he shall forfeit Five per cent (5%) thereof as a penalty, and after the first thirty (30) days he shall forfeit an additional Five per cent (5%) of said tax. Provided, how-

ever, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due. The State shall have a prior lien for all delinquent taxes, penalties and interest on all of the property used by the distributor in his business of distributing, selling and/or using cement.

"Article 19.02. Certain Services Connected with Oil Wells.

(1) The term "person" shall for the purposes of this Article mean and include individuals, partnerships, firms, joint stock companies, associations and corporations.

(2) An occupation tax at the rate and in the manner hereinafter provided is hereby imposed upon every person in this State engaged in the business of furnishing any service or performing any duty for others for a consideration or compensation, with the use of any tools, instruments or equipment, whether electrical or mechanical, owned, controlled, or furnished by such person, or by means of any chemical, electrical or mechanical processes when such service or duty is performed in or at any oil or gas well during and in connection with the drilling and completion, or reworking or reconditioning of any such well, in (1) cementing the casing seat of any oil or gas well, or (2) shooting, fracturing or acidizing the sands or other formations of the earth in any such well, or (3) surveying or testing such formations or the contents thereof, in any such well through the use of instruments or equipment at least a portion of which instruments or equipment is located within the well bore when the survey or test is made; provided, however, that nothing herein contained shall be construed or held to impose a tax upon the business of drilling or reworking any oil or gas well, or upon any service incidental thereto performed by persons engaged in such drilling or reworking business.

(3) The tax hereby imposed shall be at the rate of 2.42% of the gross amount received from the services or duty specified above after deducting from such gross amount the reasonable value at the well of any material used, consumed, expended in or incorporated into the well. The amount received from such taxable services during the calendar month

next preceding shall be reported by the person subject to the tax imposed hereby on a form prescribed and furnished by the Comptroller and the tax thereon shall be paid to the Comptroller at his office in Austin, Texas, on or before the 20th day of each month.

(4) A complete record of the business transacted, together with any other information the Comptroller may require shall be kept by each person furnishing any service or performing any duty subject to said tax, which said records shall be kept for a period of two (2) years, open to the inspection of the Comptroller of Public Accounts or the Attorney General of this State, or their authorized representatives. The Comptroller shall have the authority to adopt rules and regulations for the enforcement of this Article, and the collection of the tax levied herein.

(5) If any person shall violate any provisions of this Article, he shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five (\$25), and not more than Five Hundred Dollars (\$500) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax when the same shall become due, he shall forfeit Five per cent (5%) thereof as a penalty, and after the first thirty (30) days, he shall forfeit an additional Five per cent (5%) of said tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business.

(6) If any section, subsection, sentence, clause, or phrase of this Article is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Legislature hereby declares that it would have passed this Article and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more

of the sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

"Article 21.04. Penalties.

(1) In the event any person, firm, association of persons, or corporation who operates any place of amusement as designated in this Chapter upon which an admission tax is due shall fail or refuse to pay said tax to the Treasurer of this State on or before the date provided in this Chapter, he shall forfeit to the State of Texas not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each violation, and each day's delinquency shall constitute a separate offense. Provided that in addition to the penalties shown, if any person, firm, association of persons, or corporation shall fail to pay said tax or file such report as required by this Chapter when the same shall be due, he shall forfeit Five per cent (5%) of the amount of the tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional Five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due. Venue for the collection of such penalties by suit shall be in Travis County, Texas.

(2) The State of Texas shall have a prior lien for all delinquent taxes and penalties provided for in this Chapter on all property used by the owner or operator of any place of amusement as designated in this Chapter, and the Attorney General of the State of Texas may file suit for the collection of such tax and penalties in any court of competent jurisdiction in Travis County, Texas, and for the foreclosure of such lien, and may enjoin the operation of any such business until such taxes and penalties are paid.

(3) Any person managing or controlling any place of amusement required to file a report or keep records as provided in this Chapter, who shall fail or refuse to file such report on the date provided in this Chapter, or make and keep such records, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) and such punishment shall be

in addition to the civil penalties herein provided for. The venue for such prosecutions is hereby conferred upon the Courts of Travis County, Texas.

"Article 23.07.

If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the tax as imposed herein when said report or payment is due, he shall forfeit Five per cent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional Five per cent (5%) of such tax. Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of Six per cent (6%) per annum beginning sixty (60) days from the date due.

ARTICLE IX

Section 1. This Act shall be effective from and after September 1, 1961. Provided, however, that Article V of this Act shall become effective from and after August 31, 1961.

Section 2. All laws or parts of laws in conflict herewith are repealed to the extent of the conflict.

Section 3. Application of Chapter. If any provisions of this Chapter or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Chapter, in the application of such provision to other persons or circumstances shall not be affected thereby.

Section 4. Emergency Clause. The State of Texas, facing the greatest financial crisis in its history, requires additional revenue to retire the General Fund deficit and to provide money for schools, mental hospitals, medical aid to elder citizens, the prison system, and the orderly operation of state government for a growing population and an expanding economy. Concern for the health and welfare of all the people of Texas must be paramount. Especially is it vital to provide the funds whereby Texas children may receive free public education as promised by the Constitution, which is essential to the future of Texas. This urgent need creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and that this Act shall take effect and be in force from and after September 1, 1961, except Ar-

ticle V, which shall take effect and be in force from and after August 31, 1961, and it is so enacted.

On motion of Senator Lane and by unanimous consent the reading of the amendment was dispensed with and Senator Lane explained the amendment.

Question — Shall the Committee Amendment by Senator Lane to H. B. No. 20 be adopted?

Senator Lane offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to H. B. No. 20, by striking out all of Article V and inserting in lieu thereof the following:

"Article V

"Section 1. Article 9.25 of Chapter 9, Title 122A, Taxation—General, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session, 1959, is hereby amended to read hereafter as follows:

"Article 9.25. Enforcement Fund, Allocation of Revenue.

"Before any diversion or allocation of the motor fuel tax collected under the provisions of this Chapter is made, one per cent (1%) of the gross amount of said tax shall be set aside in the State Treasury in a special fund, subject to the use of the Comptroller in the administration and enforcement of the provisions of this Chapter, and so much of said proceeds of one per cent (1%) of the motor fuel tax paid monthly as may be needed in such administration and enforcement, be and is hereby appropriated for said purpose. Any unexpended portion of said fund so specified shall, at the end of each fiscal year, revert to the respective funds in the proper proportions to which the Motor Fuel Tax Fund levied by this Chapter is allocated at the end of each fiscal year.

"Each month the Comptroller of Public Accounts shall, after making the deductions for refund purposes as provided in Article 9.13 of this Chapter, and for the enforcement of the provisions of this Chapter, allocate and deposit the remainder of the taxes collected under the provisions of this Chapter in the proportions as follows: One-fourth ( $\frac{1}{4}$ ) of such tax shall go to, and be placed to the credit

of, the Available Free School Fund; one-half ( $\frac{1}{2}$ ) of such tax shall go to and be placed to the credit of the State Highway Fund for the construction and maintenance of the State Road System under existing laws; and from the remaining one-fourth ( $\frac{1}{4}$ ) of such tax the Comptroller shall: (1) place to the credit of the County and Road District Highway Fund an amount determined by the Board of County and District Road Indebtedness and certified by the Board to the Comptroller of Public Accounts prior to August 31st each year, for the fiscal year beginning September 1st each year, to be required in addition to any and all funds already on hand, for the payment by the Board of the principal, interest and sinking fund requirements for each year, on all bonds, warrants or other legal evidences of indebtedness heretofore issued by counties or defined road districts of this State, which mature on or after January 1, 1933, in so far as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated state highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways and declared by the Board of County and District Road Indebtedness prior to January 2, 1945, to be eligible to participate in the distribution of the moneys in the County and Road District Highway Fund under the provisions of existing laws; (2) for the fiscal year beginning September 1, 1951, and each fiscal year thereafter, the Comptroller shall place to the credit of the Fund known as the County and Road District Highway Fund the sum of Seven Million, Three Hundred Thousand Dollars (\$7,300,000), said amount to be provided on the basis of equal monthly payments, payable on the first date of each calendar month, which sum shall be allocated by the Board of County and District Road Indebtedness to all counties of Texas not later than September 15th of each year, through the Lateral Road Account, as provided under Subsection (h) of Section 6 of Chapter 324 of the General and Special Laws of the Forty-eighth Legislature, Regular Session, 1943, as amended by Section 1 of Chapter 319, Acts of the Fiftieth Legislature, 1947; and (3) the

Comptroller shall place to the credit of the State Highway Fund the remainder of such one-fourth ( $\frac{1}{4}$ ) of such tax, said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be used by the State Highway Department for the construction and improvement of Farm to Market Roads having the same general characteristics as the roads eligible for construction under Subsection 4b of Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, as amended.

"All receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year."

Section 2, Subsection (5) of Section 2, Article XX of Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941 (compiled as Article 7083a, Vernon's Civil Statutes of Texas), is hereby amended to read hereafter as follows:

"(5) All other revenue or money of any kind or character remaining in such Clearance Fund shall be paid into the General Revenue Fund of the State of Texas, and any money or revenue in excess of current biennial appropriations remaining in the special funds to which allocations are made from the Clearance Fund after the fifth working day of each month shall be transferred to the General Revenue Fund."

On motion of Senator Lane and by unanimous consent the reading of the amendment was dispensed with and Senator Lane explained the amendment.

The amendment to the pending amendment was adopted.

Senator Lane offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1, Article III of H. B. No. 20, by striking all of Section 2 thereof and substituting in lieu thereof the following:

"Section 2. Article 13.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as enacted by Chapter 13, Acts of the 56th Legisla-

ture, Third Called Session, 1959, is amended to read as follows:

**"Art. 13.03. Exemptions from Tax.**

"Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, merchandise vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax, stamp vending machines, and 'service coin-operated machines' as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Chapter."

The amendment to the pending amendment was read and was adopted.

Senator Schwartz offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to H. B. 20, Article 20.04, Subsection (T) by striking all of said Subsection and substituting in lieu thereof the following:

**"(T) Clothing.**

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, storage, use or other consumption in this State of any article of wearing apparel, including but not limited to clothing, shoes, and hats, the sale price of which is less than Ten Dollars (10.00).

(2) For the purpose of this Section, the term "article of wearing apparel" shall not be construed to include clothing accessories such as cuff links, tie holders, tie clasps, belts, cravats and neckties, scarves, collar stays, stick pins, billfolds, wallets, hand bags, canes, unattached buttons, ornamental jewelry of any type, and bathing suits.

(3) For the purpose of this Section, any components of wearing apparel, as defined herein, ordinarily sold or offered for sale as a pair, suit or ensemble shall be, when sold, deemed to be the sale of a single article.

(4) Whenever any single article of wearing apparel sells for a retail price of Ten Dollars (\$10.00) or more, the tax shall be computed on the entire selling price of the article in accordance with the schedule set forth in Article 20.02 (A) of this Chapter."

The amendment was read.

Senator Kazen offered the following substitute for the amendment by Senator Schwartz to the pending amendment:

Amend Committee Amendment No. 1 to H. B. No. 20, Article 20.04 by striking out all of subdivision

'(T) "Clothing," and substituting in lieu thereof the following:

**(T) Clothing and wearing apparel.**

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, storage, use or other consumption in this State of any single article of clothing or wearing apparel, the retail price of which is less than Ten Dollars (\$10.00).

(2) For the purpose of this Section, any articles of clothing or wearing apparel, ordinarily sold or offered for sale as a pair, suit or ensemble shall be, when sold, deemed to be the sale of a single article.

(3) Whenever any single article of clothing or wearing apparel sells for a retail price of Ten Dollars (\$10.00) or more, the tax shall be computed on the entire selling price of the article in accordance with the schedule set forth in Article 20.02 (A) of this Chapter.

The substitute for the pending amendment by Senator Schwartz was read.

On motion of Senator Lane the substitute by Senator Kazen for the amendment by Senator Schwartz was tabled.

Senator Lane then moved to table the amendment by Senator Schwartz to the pending amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

**Yeas—21**

Calhoun	Moffett
Creighton	Moore
Crump	Owen
Dies	Parkhouse
Fuller	Ratliff
Hardeman	Reagan
Hazlewood	Roberts
Herring	Secret
Hudson	Smith
Lane	Weinert
Martin	



## Nays—10

Aikin	Krueger
Baker	Patman
Colson	Rogers
Gonzalez	Schwartz
Kazen	Willis

Senator Lane offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 Sub-section (1) (T) of Article 20.04, Article I, page 27, of H. B. No. 20 as amended, by inserting after the words "wearing apparel" the following words:

"made of cotton, twill, poplin, denim or chambray"

The amendment was read.

Senator Schwartz offered the following substitute for the pending amendment by Senator Lane:

"Amend Committee Amendment No. 1 to H. B. 20, Article 20.04, Sub-section (T) by striking all of said Subsection and substituting in lieu thereof the following:

"(T) Clothing.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, storage, use or other consumption in this State of any article of wearing apparel, including but not limited to clothing, shoes, and hats, the sale price of which is less than Five Dollars.

(2) For the purpose of this Section, the term "article of wearing apparel" shall not be construed to include clothing accessories such as cuff links, tie holders, tie clasps, belts, cravats and neckties, scarves, collar stays, stick pins, billfolds, wallets, hand bags, canes, unattached buttons, ornamental jewelry of any type, and bathing suits.

(3) For the purpose of this Section, any components of wearing apparel, as defined herein, ordinarily sold or offered for sale as a pair, suit, or ensemble shall be, when sold, deemed to be the sale of a single article.

(4) Whenever any single article of wearing apparel sells for a retail price of Ten Dollars (\$10.00) or more, the tax shall be computed on the entire selling price of the article in accordance with the schedule set

forth in Article 20.02 (A) of this Chapter."

The amendment was read.

Senator Lane moved to table the substitute by Senator Schwartz for the pending amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

## Yeas—21

Calhoun	Moffett
Creighton	Moore
Crump	Owen
Dies	Parkhouse
Fuller	Ratliff
Hardeman	Reagan
Hazlewood	Roberts
Herring	Secrest
Hudson	Smith
Lane	Weinert
Martin	

## Nays—10

Aikin	Krueger
Baker	Patman
Colson	Rogers
Gonzalez	Schwartz
Kazen	Willis

Question recurring on the amendment by Senator Lane to the pending Committee Amendment, Senator Schwartz moved to table.

The motion to table was lost.

## Record of Votes

Senators Schwartz, Krueger and Colson asked to be recorded as voting "Yea" on the motion to table.

Senator Lane's amendment to the pending amendment was then adopted.

## Record of Votes

Senators Schwartz, Krueger, Colson and Gonzalez asked to be recorded as voting "Nay" on the adoption of the amendment by Senator Lane to the pending Committee Amendment.

Senator Lane offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to House Bill No. 20 by striking

all of Section 3 of Article IX and inserting in lieu thereof the following:

"Sec. 3. Severability Clause. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications to the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

The amendment was read and was adopted.

Senator Hardeman offered the following amendment to the pending Committee Amendment:

Amend Committee Amendment No. 1 to H. B. 20 by adding a new Article to be known as Article VIIA to read as follows:

**"Article VIIA:**

"Section 1. Each individual, company, corporation, or association engaged in the business of producing any metal or liquid (except alcoholic beverages, oil, gasoline, or other liquid hydrocarbons) in this State by any chemical, metallurgical, or electrolytic process on or before the 25th day of January, April, July, and October of each year make a report to the Comptroller under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association showing the gross amount received from such business for the three calendar months next preceding such report. Said individual, company, corporation, or association, at the time of making said report, shall pay to the Comptroller an occupation tax for the three calendar months next preceding such report equal to one one-hundredths of one per cent (.01 of 1%) of said gross receipts in excess of Two Hundred and Fifty Thousand Dollars (\$250,000) as shown by said report. A complete record of the business transacted, together with any other information the Comptroller may require, shall be kept by each individual, company, corporation, or association engaged in said business for a period of two (2) years, open to the inspection of the Comptroller or the Attorney General or their authorized representatives. The Comptroller shall have the authority to adopt rules and reg-

ulations for the enforcement of this Act and the collection of the tax levied herein. If any person, company, corporation, or association shall violate any provision of this Act, he or it shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five Dollars (\$25), and not more than Five Hundred Dollars (\$500) for each violation, and each day's violation shall constitute a separate offense, and in addition thereto delinquent taxes shall draw a penalty equal to one per cent (1%) per month from due date. The state shall be secured for all taxes, penalties, interest and costs due by a preferred lien, first and prior to any and all other existing liens, contractual or statutory, legal or equitable upon all the property used by the taxpayer in his or its business."

On motion of Senator Hardeman and by unanimous consent the reading of the amendment was dispensed with and Senator Hardeman explained the amendment.

On motion of Senator Lane the amendment by Senator Hardeman was tabled.

Question — Shall the Committee Amendment by Senator Lane to H. B. No. 2 be adopted?

**House Bill on First Reading**

The following bill received from the House was read the first time and referred to the committee indicated:

H. B. No. 63, To the Committee on Privileges and Elections.

**Reports of Standing Committees**

Senator Krueger by unanimous consent submitted the following reports:

Austin, Texas,  
August, 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred H. B. No. 37, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

KRUEGER, Chairman.

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred H. B. No. 36, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

KRUEGER, Chairman.

Senator Parkhouse by unanimous consent submitted the following report:

Austin, Texas,  
August, 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Water and Conservation, to whom was referred H. B. No. 41, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

PARKHOUSE, Chairman.

#### Senate Bills on First Reading

The following bills were introduced, read first time and referred to the committees indicated:

By Senator Moore:

S. B. No. 67, A bill to be entitled "An Act authorizing certain cities to issue refunding bonds due serially and bearing interest as provided in this Act for the purpose of refunding outstanding tax supported bonds adjudicated to be valid by a decree of the Federal Court, where the ordinance authorizing the issuance of such refunding bonds provides that not less than a rate of tax therein specified shall be levied, assessed and collected each year as long as any of such bonds or interest thereon are outstanding; providing that, in lieu of exchanging such new refunding bonds, they may be sold and the proceeds deposited in the bank where the outstanding bonds are payable; providing that when such new refunding bonds are approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts they shall be incontestable and shall constitute valid and binding obligations of such city; providing that no city charter provision relating to the terms, issuance, sale and delivery of

bonds shall be applicable to bonds issued under this law; enacting other provisions related to the subject; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senator Crump:

S. B. No. 68, A bill to be entitled "An Act fixing the date for any reclassification under any law requiring classification based on the Federal Decennial Population Census; establishing a moratorium for reclassification of certain laws according to the 1960 Federal Census; providing the mode for suspension of the moratorium; providing compilation of certain statutes effected by each decennial census by the Legislative Council; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

#### House Bill 41 Ordered Not Printed

On motion of Senator Schwartz and by unanimous consent H. B. No. 41 was ordered not printed.

#### House Bill 36 Ordered Not Printed

On motion of Senator Colson and by unanimous consent H. B. No. 36 was ordered not printed.

#### House Bill 37 Ordered Not Printed

On motion of Senator Crump and by unanimous consent H. B. No. 37 was ordered not printed.

#### House Bill 50 Ordered Not Printed

On motion of Senator Hudson and by unanimous consent H. B. No. 50 was ordered not printed.

#### Recess

On motion of Senator Hardeman the Senate at 12:07 o'clock p.m. took recess until 2:30 o'clock p.m. today.

#### After Recess

The President called the Senate to order at 2:30 o'clock p.m. today.

#### Report of Standing Committee

Senator Aikin by unanimous consent submitted the following report:

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns, to whom was referred S. B. No. 67, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

### Message from the House

Hall of the House of Representatives

Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S. C. R. No. 12, Petitioning the Texas Delegation in Congress to vote to instigate proper control over dangerous drugs, etc.

S. C. R. No. 3, Resolution by the 57th Texas Legislature, 1st Special Session, giving permission to Sibyl Browne, et al., to sue the State of Texas.

S. C. R. No. 14, Granting Star Farm, Inc., permission to sue the State of Texas. (With Amendments.)

S. C. R. No. 15, To grant the Houston Lighting and Power Company to bring suit against the State of Texas.

S. C. R. No. 17, Granting permission of F & C Engineering Company to sue the State.

S. C. R. No. 18, Granting R. A. Coale permission to sue the State.

S. C. R. No. 19, Authorizing Texas Gas Utilities Corporation to sue the State of Texas to recover certain severance beneficiary taxes levied by Articles 22.01-22.09, House Bill No. 11, Acts of the 56th Legislature, 3rd Called Session. (With Amendments.)

S. C. R. No. 20, Permission to sue the State—Walter F. Myers, Independent Executor of the Estate of Edna E. Myers, deceased.

Respectfully submitted,

DOROTHY HALLMAN,  
Chief Clerk, House of Representatives

### House Bill 20 on Second Reading

The Senate resumed the consideration of the pending business, same being H. B. No. 20 on its second

reading with a Committee Amendment by Senator Lane pending. (The bill having been read the second time this morning.)

Question — Shall the Committee Amendment by Senator Lane to H. B. No. 20 be adopted?

Senator Dies offered the following amendment to the pending amendment:

Amend the Senate Committee Amendment No. 1 to H. B. 20 by adding to Article 7 a new section as follows:

"Section 1(a). In the event that the tax provided for in the foregoing sections of Article 7, known as the 'dedicated reserves gas tax,' be declared invalid by a final judgment of a competent court of jurisdiction, then and only then, Article 3.01 of Title 122A Taxation—General of the Revised Civil Statutes of Texas, 1925, be amended to read as follows:

"Article 3.01, Calculation of Tax:

(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

(a) from the effective date of this Act, a tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight per cent (8%) of the market value thereof as and when produced;

(b) From and after the effective date of this Act, the rate of said tax shall be eight per cent (8%) of the market value of the gas as and when produced.

Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

(2) In calculating the tax herein levied, there shall be excluded (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; and (c) gas used for lifting oil, unless sold for such purposes."

In the event Article 7 of this Act, known as the 'dedicated reserves gas tax,' is held invalid by a final judgment of a court of competent jurisdiction, then the increase in the tax provided herein shall be effective from and after thirty (30) days after the date of the final judgment declaring

dedicated reserves gas tax invalid. Nothing herein shall be construed to in any way suspend the present tax provided for in Article 3.01 of Title 122A Taxation—General of the Revised Civil Statutes of Texas, 1925, and should Article 7 of this bill, known as the 'Dedicated reserves gas tax,' be challenged or contested in court, the present occupation tax on the occupation of producing gas provided for in Article 3.01 of Title 122A Taxation—General of the Revised Civil Statutes of Texas, 1925, shall remain in force and effect during any period of court contest or challenge of the dedicated reserve gas tax. Only in the event the dedicated reserves gas tax shall be declared void by a final judgment of a court of competent jurisdiction, shall the present occupation tax on the business or occupation of producing gas within this State provided for in Article 3.01 of Title 122A Taxation—General of the Revised Civil Statutes of Texas, 1925, be changed or amended as provided above.

On motion of Senator Dies and by unanimous consent the reading of the amendment was dispensed with and he explained the amendment.

Senator Lane moved to table the amendment to the pending committee amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

## Yeas—21

Baker	Moffett
Calhoun	Parkhouse
Creighton	Patman
Crump	Ratliff
Fuller	Reagan
Hardeman	Roberts
Hazlewood	Rogers
Hudson	Smith
Kazen	Weinert
Lane	Willis
Martin	

## Nays—9

Aikin	Krueger
Colson	Moore
Dies	Schwartz
Gonzalez	Secrest
Herring	

## Absent

Owen

Senator Lane offered the following amendment to the pending amendment:

Amend Section 1 of Article VI of Senate Committee Amendment No. 1 to H. B. 20 by deleting from subparagraph (1) of Article 11.03, the first sentence and substituting therefor the following:

"Each individual, company, corporation, or association owning, operating, managing, or controlling any gas, electric light, electric power, water works, water and light plant, or telephone lines or telephones, located within any incorporated town or city in this State, and used for local sale and distribution, or telephone service, in said city or town, and charging for such local sale and distribution of gas, electric lights, electric power, or water, or use of telephone lines or telephones, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such local sale and distribution of gas, electric lines, electric power, or water, or use of telephone lines or telephones, for the quarter next preceding."

The amendment to the pending amendment was adopted.

Senator Schwartz offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to H. B. 20, Article 20.04, Subsection (Q) by striking all of said subsection and inserting in lieu thereof the following:

"(Q) Certain Utility Service Exempt. There are exempted from the taxes imposed by this Chapter the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity when purchased for and actually used as fuel or source of power for the operation of machines, or processes used in industrial, manufacturing, mining, agricultural, dairy or poultry operations or pumping water for irrigation or for electrical processes such as electroplating and electrolysis, provided the gas and electricity so used is separately metered."

The amendment to the pending amendment was read.

Senator Lane moved to table the amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table the amendment prevailed by the following vote:

**Yeas—24**

Aikin	Martin
Calhoun	Moffett
Colson	Moore
Creighton	Owen
Crump	Parkhouse
Dies	Patman
Fuller	Ratliff
Gonzalez	Reagan
Hardeman	Rogers
Hazlewood	Secrest
Krueger	Smith
Lane	Weinert

**Nays—6**

Baker	Kazen
Herring	Schwartz
Hudson	Willis

**Absent**

Roberts

Senator Rogers offered the following amendment to the pending committee amendment:

Amend Committee Amendment No. 1, Article I to House Bill No. 20 by striking out from Page 18 of said Committee Amendment No. 1, the following:

"(2) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, production, distribution or the storage, use or other consumption in this State of alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when, consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor."

and renumbering the following paragraph in proper sequence.

ROGERS  
MOFFETT  
WILLIS

On motion of Senator Rogers and by unanimous consent the reading of the amendment was dispensed with and he explained the amendment.

Senator Lane moved to table the amendment by Senator Rogers.

Question on the motion to table, yeas and nays were demanded.

The motion to table the amendment prevailed by the following vote:

**Yeas—24**

Baker	Krueger
Calhoun	Lane
Creighton	Martin
Crump	Moore
Dies	Owen
Fuller	Parkhouse
Gonzalez	Patman
Hardeman	Reagan
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Weinert

**Nays—7**

Aikin	Roberts
Colson	Rogers
Moffett	Willis
Ratliff	

Senator Herring offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to House Bill 20 by striking out the language contained in Article VII, Section (1)(b)(3) appearing as the first numbered paragraph on Page 66 of the amendment and by inserting in lieu thereof the following language:

"(3) In view of the conservation benefits to be gained and in order to encourage the prevention of waste, it is provided however that any person who is a dedicated reserve producer by virtue of a contract dealing in whole or in part with casing head gas (or gas referred to in "B," below) and under the terms of which contract such gas is processed to remove liquefiable hydrocarbons in a casing head gas plant shall be taxed

A. With respect to the casing head gas so processed and

B. With respect to gas which continues to be recovered from wells formerly producing casing head gas but in which the oil has been depleted, at the rate of two per cent of the

difference between the price paid by the said dedicated reserve producer under the dedicated reserve contract and the price at which the said dedicated reserve producer sells the residue gas removed from such gas, multiplied by the number of MCF of residue gas removed. If the price of such residue gas is less than the price of the whole gas from which the same was removed, then no additional tax shall be applicable. The dedicated reserve producer under this sub-paragraph shall never be obligated hereunder to pay a greater tax than that provided for other dedicated reserve producers under Article (3) (a) hereof.

The amendment was read.

Senator Lane moved to table the amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

## Yeas—19

Baker	Moore
Calhoun	Owen
Creighton	Parkhouse
Crump	Ratliff
Fuller	Reagan
Hardeman	Roberts
Hazlewood	Secrest
Lane	Smith
Martin	Weinert
Moffett	

## Nays—12

Aikin	Kazen
Colson	Krueger
Dies	Patman
Gonzalez	Rogers
Herring	Schwartz
Hudson	Willis

Senator Patman offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to H. B. 20 by striking Article VI thereof and renumbering the succeeding Articles in conformance to such deletion.

The amendment was read.

Senator Lane moved to table the amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table the amendment prevailed by the following vote:

## Yeas—22

Aikin	Martin
Baker	Moore
Calhoun	Owen
Colson	Parkhouse
Creighton	Ratliff
Crump	Reagan
Dies	Roberts
Hardeman	Rogers
Hazlewood	Secrest
Hudson	Smith
Lane	Weinert

## Nays—8

Gonzalez	Moffett
Herring	Patman
Kazen	Schwartz
Krueger	Willis

## Absent

## Fuller

Senator Gonzalez offered the following amendment to the pending amendment:

Amend the Committee Amendment to H. B. 20 by adding the following section:

Section 1a. Provided that Article I of this Act shall terminate on September 1, 1963."

GONZALEZ  
SCHWARTZ

The amendment was read.

(Pending discussion of the amendment, Senator Parkhouse occupied the Chair.)

(President in the Chair.)

On motion of Senator Lane the amendment to the pending amendment was tabled.

## Record of Votes

Senators Krueger, Schwartz, Kazen and Willis asked to be recorded as voting "Nay" on the motion to table the above amendment.

Senator Gonzalez offered the following amendment to the pending amendment:

Amend the Committee Amendment No. 1 to H. B. 20 by adding the following section:

Section 2a. Providing that any city, town, or village in this state shall not

levy any form of sales tax, transaction tax, or any other like tax upon the inhabitants thereof.

The amendment was read.

Senator Lane raised the Point of Order that the amendment was not germane to the purpose of H. B. No. 20 which was to raise revenue for the operation of State Government.

The Point of Order was sustained, the President ruling that the general purpose of the bill was to raise revenue for the State and that the amendment relating to the authority of cities, towns and counties to tax was not germane to the bill.

Senator Kazen offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to H. B. No. 20, Article 20.04, Subsection (E) by adding at the end of Provision (1) the following:

"(d) There are specifically exempted from the taxes imposed by the provisions of this Act all those sales made to citizens of foreign countries when the merchandise is exported for use in a foreign country."

The amendment was read.

Senator Lane moved to table the amendment to the pending amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

Yeas—26

Aikin	Moore
Baker	Owen
Calhoun	Parkhouse
Colson	Patman
Creighton	Ratliff
Dies	Reagan
Fuller	Roberts
Hardeman	Rogers
Hazlewood	Schwartz
Hudson	Secrest
Lane	Smith
Martin	Weinert
Moffett	Willis

Nays—5

Crump	Kazen
Gonzalez	Krueger
Herring	

Senator Willis offered the following amendment to the pending amendment:

Amend Article I, of Committee Amendment No. 1, to House Bill No. 20, striking from Pages 23 and 24 the following paragraphs:

"(K) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

"(1) 'Food products' shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleomargarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetable and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa and cocoa products; or any combination of the above.

"(2) 'Food products' shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form;

"(b) Water, including mineral bottled water, carbonated water, ice and candy;"

and inserting in lieu thereof the following:

"(K) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or consumption of, food products for human consumption.

"(1) 'Food products' shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream; oleomargarine, meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetable and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; candy; coffee and coffee substitutes; tea, cocoa and cocoa products; or any combination of the above.

"(2) 'Food products' shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form;



"(b) Water, including mineral bottled water, carbonated water and ice."

On motion of Senator Willis and by unanimous consent the reading of the amendment was dispensed with and he explained the amendment.

On motion of Senator Lane the amendment was tabled.

Senator Willis offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to House Bill No. 20 by adding thereto a new Article to be numbered and read as follows:

"Article 1-A. Chapter 21 of Title 122A, Taxation—General, of the Revised Civil Statutes of Texas, 1925, is amended to read as follows:

#### 'Chapter 21

#### Admissions Tax

Article 21.01. Classifications of Operators or Sponsors.

(1) "Class A"—Fixed and regularly established operators: They own their places, or are lessees thereof, operating continuously fifty-two (52) weeks per year, one (1) or more days per week.

(2) "Class B"—Fixed Established Operators: They own their places, or are lessees thereof, operating continuously one (1) or more days per week, less than fifty-two (52) weeks per year.

(3) "Class C"—Miscellaneous Operators or Sponsors: All operators or sponsors other than "Class A" and "Class B" herein.

Art. 21.02. Reports Required. Every person, firm, association of persons, or corporation, classified herein as "Class A" and "Class B," that charges a price, fee or dues for admission for events, places or premises, not prohibited by law, shall file with the Comptroller a quarterly report on the twenty-fifth (25th) day of January, April, July and October for the quarter ending on the last day of the preceding month; said report to show the gross amount received and the price, fees or dues for admission;

Provided, however, that the report herein required shall be made upon the day following the conclusion of each event, or consecutive series of events, presented or sponsored by those classified "Class C" herein; and further provided, however, that

every person, firm, association of persons, or corporation, leasing or providing places or premises to operators or sponsors classified "Class C" herein, immediately following agreement to lease or provide their places or premises to "Class C" operators or sponsors shall notify the Comptroller advising the name and address of the "Class C" operator or sponsor, the event and the date or dates said event or events will be held.

And further provided, that every person, firm, association of persons, or corporation, leasing or providing places or premises to "Class C" operators or sponsors, shall collect the payable admission tax, report and pay same, as required for "Class C" operators herein.

Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided.

#### Art. 21.03. Tax Imposed.

(1) There is hereby levied a tax of ten percent (10%) of the amount of the admission charged in excess of One Dollar (\$1) to events by operators classified as "Class A" herein, where the admission is in excess of One Dollar (\$1) per person.

(2) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to events by operators classified as "Class B" herein, where the admission charged is in excess of fifty-one cents (51¢) per person.

(3) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to events by operators or sponsors classified as "Class C" herein.

(4) There is hereby levied on the amounts paid for admission to events, places or premises, by dues, season tickets, subscription, or lease for admission to any event, a tax equivalent to ten percent (10%) of the amount paid therefor.

(5) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission is collected.

(6) No tax shall be levied under this Chapter on any admission, dues or fees collected for events, all the gross proceeds of which inure exclusively to the benefit of State, re-

ligious, educational or charitable institutions, societies or organizations, and nonprofit corporations, organized and chartered under the laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock;

Provided, however, that a Certificate of Exemption be obtained from the Comptroller, prior to each such event.

Application for Certificate of Exemption must be made on a form provided by the Comptroller, at least thirty (30) days in advance.

Art. 21.04. Records Required. Every person, firm, association of persons, or corporation who operates any place or premises as designated in this Chapter upon which an admission tax is due shall make and keep records in Texas at headquarters office, or if an itinerant producer, the place where records are to be kept shall be at the address shown on remittance report if outside the boundaries of Texas, or at a place to be named on said remittance report if to be kept in Texas, for a period of two (2) years.

Said records shall correctly reflect (1) the date of event for which a ticket admission was required, (2) the value of each ticket of admission, (3) number of patrons admitted by each ticket of admission, and (4) if admitted gratuitously, the number of patrons so admitted.

Said records shall be open to the inspection of the Comptroller and the Attorney General, or their duly authorized agents.

If any person, firm, association of persons, or corporation shall fail to keep such records, or shall refuse to allow the inspection of such records as above provided for, such person, firm, association of persons, or corporation shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars (\$25) nor more than One Thousand Dollars (\$1,000) for each violation, and each violation shall constitute a separate offense. The venue for the collection of such penalties by suit be in Travis County, Texas.

#### Art. 21.05. Penalties.

(1) In the event any person, firm, association of persons, or corporation who operates as designated in this Chapter upon which an admission tax

is due shall fail or refuse to pay said tax to the Treasurer of this State of Texas not less than twenty-five Dollars (\$25) nor more than One Hundred (\$100) for each violation, and each day's delinquency shall constitute a separate offense. Venue for the collection of such penalties by suit shall be in Travis County, Texas.

(2) The State of Texas shall have a prior lien for all delinquent taxes and penalties provided for in this Chapter on all property used by the owner or operator of any place as designated in this Chapter, and the Attorney General of the State of Texas may file suit for the collection of such tax and penalties in any court of competent jurisdiction in Travis County, Texas, and for the foreclosure of such lien, and may enjoin the operation of any such business until such taxes and penalties are paid.

(3) Any person managing or controlling any place required to file a report or keep records as provided in this Chapter, who shall fail or refuse to file such report on the date provided in this Chapter, or make and keep such records, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) and such punishment shall be in addition to the civil penalties herein provided for. The venue for such prosecutions is hereby conferred upon the courts of Travis County, Texas."

On motion of Senator Willis and by unanimous consent the reading of the amendment was dispensed with and he explained the amendment.

On motion of Senator Lane the amendment was tabled.

Senator Hudson offered the following amendment to the pending amendment:

Amend Committee Amendment No. 1 to H. B. 20 by striking out the last section of Article VII being (7).

The amendment was read.

On motion of Senator Lane the amendment was tabled.

Senator Gonzalez offered the following amendment to the pending amendment:

Amend the Committee Amendment

to H. B. 20 by deleting Article I of this Act.

The amendment was read.

(Pending discussion by Senator Gonzalez of his amendment Senator Reagan occupied the Chair.)

(Senator Parkhouse in the Chair.)

(Pending further discussion by Senator Gonzalez of his amendment Senator Reagan occupied the Chair.)

(Senator Hardeman in the Chair.)

(Pending further discussion by Senator Gonzalez of his amendment, Senator Aikin occupied the Chair.)

(August 3, 1961)

(Senator Roberts in the Chair.)

(Pending further discussion by Senator Gonzalez of his amendment, Senator Aikin occupied the Chair.)

(President in the Chair.)

Senator Lane moved to table the amendment by Senator Gonzalez to the pending amendment.

Question on the motion to table, yeas and nays were demanded.

The amendment was tabled by the following vote:

#### Yeas—22

Baker	Martin
Calhoun	Moffett
Creighton	Moore
Crump	Owen
Dies	Parkhouse
Fuller	Ratliff
Hardeman	Reagan
Hazlewood	Roberts
Herring	Rogers
Hudson	Secrest
Lane	Smith

#### Nays—8

Aikin	Krueger
Colson	Patman
Gonzalez	Schwartz
Kazen	Willis

#### Absent

Weinert

The Committee Amendment as amended was then adopted.

On motion of Senator Lane and by unanimous consent the caption was amended to conform to the body of the bill as amended.

H. B. No. 20 as amended was passed to third reading.

#### Record of Votes

Senators Kazen, Willis, Krueger, Aikin and Schwartz asked to be recorded as voting "Nay" on the passage of H. B. No. 20 to third reading.

#### House Bill 20 on Third Reading

Senator Lane moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that H. B. No. 20 be placed on its third reading and final passage.

The motion prevailed by the following vote:

#### Yeas—24

Aikin	Lane
Baker	Martin
Calhoun	Moffett
Colson	Moore
Creighton	Owen
Crump	Parkhouse
Dies	Ratliff
Fuller	Reagan
Hardeman	Roberts
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith

#### Nays—6

Gonzalez	Patman
Kazen	Rogers
Krueger	Willis

#### Absent

Weinert

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

#### Yeas—20

Baker	Hazlewood
Calhoun	Herring
Creighton	Hudson
Crump	Lane
Dies	Moffett
Fuller	Moore
Hardeman	Owen

Parkhouse  
Ratliff  
Reagan

Roberts  
Secrest  
Smith

Nays—10

Aikin  
Colson  
Gonzalez  
Kazen  
Krueger

Martin  
Patman  
Rogers  
Schwartz  
Willis

Absent

Weinert

#### Reason for Vote

I voted against the tax bill because it was loaded with 86% general sales taxes, with only about 8% on business and 6% transfer of money by book-keeping procedures. This 86%, or 309 million in new retail sales taxes, places an unfair tax burden on the low income citizens, who can least afford to pay any new taxes.

This tax bill is loaded with exemptions for special interest groups. It raises over 7 million dollars by doubling your driver's license fee which was never intended to raise revenue. Taxes on telephone corporations are reduced 4½ million dollars, while taxes on homeowner's telephones are raised. School books are taxed, while beer is classed with baby food and not taxed. Beer still pays only 11¢ per bottle state tax while cigarettes pay 8¢ per package. This is a gross inequity. These are only three examples of this bad tax bill—there are many more.

My votes on taxes are exactly like the agreement made with Tarrant County voters—I kept my campaign promise not to vote for a general retail sales tax. I voted for Governor Daniel's selective and business tax bill and would have voted for any fair tax bill that would have divided taxes fairly on citizens and business alike.

WILLIS

#### Message From the House

Hall of the House of Representatives  
Austin, Texas,  
August 2, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S. B. No. 24, A bill to be entitled "An Act amending Section 2 of Chapter 147, Acts of the 51st Legislature, Regular Session, 1949, as last amended by Chapter 20, Acts of the 55th Legislature, Regular Session, 1957, which Section 2 relates to the powers, rights, privileges and functions of the Port of Beaumont Navigation District, by adding to said Section two new subsections to be known as subsection (k) and (l) respectively, relating to the authority of the Board of Commissioners to fix rates of pilotage and the liability of certain vessels under certain circumstances for the payment of pilotage; and declaring an emergency."

S. B. No. 25, A bill to be entitled "An Act amending Section 2 of Chapter 370, Acts of the 53rd Legislature, Regular Session, 1953, as said Act was amended and re-enacted by Chapter 80, Acts of the 55th Legislature, Regular Session, 1957, which Section 2 relates to the powers, rights, privileges and functions of the Orange County Navigation and Port District, by adding to said Section two (2) subsections to be known as subsections (k) and (l) respectively, relating to the authority of the Board of Commissioners to fix rates of pilotage and the liability of certain vessels under certain circumstances for the payment of pilotage; and declaring an emergency."

S. B. No. 26, A bill to be entitled "An Act amending Article 8274 of the Revised Civil Statutes of Texas, 1925, as last amended by Chapter 21, Acts of the 56th Legislature, Regular Session, 1959, to increase the rate of pilotage which may be charged in the ports and/or terminals located above the junction of the Neches River with the Sabine-Neches Canal; and declaring an emergency."

S. B. No. 32, A bill to be entitled "An Act directing the Commissioners Court of the Counties of the District of the District Attorney of the 23rd Judicial District to supplement the salary of the District Attorney of the 23rd Judicial District; and declaring an emergency."

S. B. No. 42, A bill to be entitled "An Act amending Chapter 221, Acts of the Fifty-fifth Legislature (being the law creating White River Municipal Water District), by adding a provision with reference to annexation

of additional territory; enacting other provisions related to the subject; and declaring an emergency."

S. B. No. 43, A bill to be entitled "An Act relating to White River Municipal Water District created by Chapter 221, Acts of the Fifty-fifth Legislature; naming the persons to constitute the Board of Directors of said district; validating acts performed by such Directors and by the persons who served before them as such Directors; validating all proceedings heretofore had with reference to the voting and authorization of bonds by the district, etc., and declaring an emergency."

S. B. No. 45, A bill to be entitled "An Act amending Article 4584 of the Revised Civil Statutes of Texas, 1925, as amended, so as to repeal that portion of the law allowing procedures that lead to diversion of bodies which would otherwise become available for the advancement of medical science; and with the purpose of eliminating the shortage of bodies that can be used for medical teaching and research; and declaring an emergency."

S. B. No. 46, A bill to be entitled "An Act amending Section 2, House Bill No. 264, Fifty-sixth Legislature, 1959, so as to repeal that portion of the law which is not correlated with the Anatomical Law (Article 4584, Revised Civil Statutes of Texas, 1925), permits indiscriminate distribution of bodies, and does not provide for keeping records; and with the purpose of unifying the laws dealing with human bodies used for the advancement of medical science, providing for recording their distribution, and giving a uniform method of handling all such bodies through the activity of the Anatomical Board of the State of Texas; and declaring an emergency."

H. B. No. 111, A bill to be entitled "An Act to raise revenue for the State of Texas by adoption of certain economy measures and the imposition of certain taxes and fees; amending Article 2700, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 412, Acts of the 51st Legislature, Regular Session, 1949, and Article 2701, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 322, Acts of the 53rd Legislature, Regular Session,

1953, to provide that the salaries of county school superintendents and ex-officio county school superintendents shall be paid out of county funds; amending Section 8 of Chapter 470, Acts of the Forty-fifth Legislature, Regular Session, 1937, as last amended by Chapter 530, Acts of the Fifty-fourth Legislature, Regular Session, 1955, to provide that upon the withdrawal of a member from the Teacher Retirement System contributions made by the State to match the contributions of such member shall be returned to the General Revenue Fund; amend Subsection D of Section 5, Chapter 352, Acts, Fiftieth Legislature, 1947, as rearranged and last amended by Article 1 of Chapter 402, Acts, Fifty-fifth Legislature, 1957, compiled as Subsection D, Chapter 5, Article 6228a, Vernon's Texas Civil Statutes, to provide that upon the withdrawal of a member from the State Employees Retirement System contributions made by the State to match the contributions of such member shall be returned to the General Revenue Fund; amending Section 1, Chapter 196, Acts of the Forty-third Legislature, Regular Session, 1933, as last amended by Chapter 435, Acts of the Fifty-fifth Legislature, Regular Session, 1957, to increase tuition charges in State-supported institutions of higher education; amending Sections 1, 2 and 4 of Chapter 152, Acts of the Forty-fifth Legislature, Regular Session, 1937 (compiled in Vernon's Annotated Civil Statutes as Article 3196a, Sections 1, 2 and 3) to provide for the collection of fees from non-indigent patients in State hospitals and institutions; imposing an occupation tax on mineral producers; allocating to the Minimum Foundation School Fund all funds heretofore allocated to the Available School Fund, except those funds which are allocated by the Constitution to the Available School Fund; providing an effective date; repealing conflicting laws; providing for severability; and declaring an emergency."

S. B. No. 15, An Act relating to the Municipal Pension Systems in certain cities amending Chapter 358, Acts of the Forty-eighth Legislature, 1943, as amended; and declaring an emergency.

S. B. No. 61, A bill to be entitled "An Act constituting a local law for the maintenance of public roads and

highways in LaSalle County by authorizing the County to issue certificates of indebtedness for certain stated purposes; stating terms and conditions of issuance; requiring the levy of a tax to pay such certificates; enacting other provisions relating to the subject; containing a severability clause; and declaring an emergency."

S. B. No. 63, Relating to Northeast Texas Municipal Water District created by Chapter 78, Acts of the 53rd Legislature; naming the persons to constitute the Board of Directors of said District; validating acts performed by such Directors and by the persons who served before them as such Directors; etc., and declaring an emergency.

S. B. No. 18, A bill to be entitled "An Act transferring a certain causeway located in Calhoun County, Texas, from the State Highway Department to the Texas State Parks Board; authorizing the State Game and Fish Commission to make necessary improvements in order to provide a serviceable fishing pier and to maintain such a pier; and declaring an emergency."

(With amendments.)

S. B. No. 20, A bill to be entitled "An Act authorizing the State of Texas through and by the Board for Texas State Hospitals and Special Schools to convey the waterworks and sanitary sewer system together with the land and easements on which they are situated, located in Smith County, Texas, to Smith County Water Control and Improvement District No. 1 (Owentown), a political subdivision

of the State of Texas duly created and acting under the laws of the State of Texas; making certain findings; and declaring an emergency."

Respectfully submitted,

DOROTHY HALLMAN,  
Chief Clerk, House of Representatives

#### House Bill on First Reading

The following bill was introduced, read first time and referred to the committee indicated:

H. B. No. 111, To the Committee on State Affairs.

#### Memorial Resolutions

S. R. No. 50—By Senator Willis: Memorial resolution for Dixon J. Holman.

S. R. No. 51—By Senator Willis: Memorial resolution for William Elmer Shields.

S. R. No. 52—By Senator Ratliff: Memorial resolution for Frank Grimes.

S. R. 53—By Senator Schwartz: Memorial resolution for Charles Bertolino.

#### Welcome Resolution

S. R. No. 49—By Senator Parkhouse: Extending welcome to Mrs. Henry Coke and son of Dallas.

#### Adjournment

On motion of Senator Hardeman the Senate at 1:23 o'clock a.m. adjourned until 3:00 o'clock p.m. today.

**In Memory of**  
**Judge Theodore R. Robinson**

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Senator Schwartz offered the following resolution:

(Senate Resolution 54)

Whereas, On the 1st day of August, 1961, our Heavenly Father in His infinite wisdom called to his eternal reward, Judge Theodore R. Robinson; and

Whereas, The State of Texas has lost a great leader, who for years devoted his life to the welfare of the people; and

Whereas, This outstanding man, among men, has during his lifetime been known, respected, and loved by all those men and women charged with the responsibility of administering the affairs of this state; and

Whereas, His contributions were unequaled during his many years of public service and he had undying loyalty to those with whom and for whom he worked; and

Whereas, He contributed unselfishly in his position of leadership; and

Whereas, Among his outstanding endeavors and interests has been the development and extension of the Galveston seawall; vital work on the Galveston Causeway and County Health Unit; and all other projects in the best interest of Galveston County; and

Whereas, He represented Galveston County as State Representative in the Regular Session of the 46th Legislature, and he served 19 years as County Judge and was just completing his second 4-year term as County Judge; and

Whereas, He served in 1945 as Grand Senior Deacon of the Grand Masonic Lodge of Texas; also served as past Master of the Phillip Tucker Masonic Lodge; and was a member of the Knights Templar; El Mina Shrine; Fraternal Order of Eagles; Galveston Kiwanis Club; member and Trustee of First Methodist Church; and

Whereas, He is survived by his wife, Mrs. Wilhelmina Johnson Robinson; a daughter, Shirley Robinson; one son, Theodore Robinson, Jr.; one sister, Mrs. Helen E. Hemple; and four brothers, George E. Robinson, Fred F. Robinson, A. P. Robinson, Sr., and Lee Robinson; therefore, be it

Resolved, That in the passing of Judge Robinson, the Senate of Texas mourns the loss of a great and good man whose deeds in behalf of his city, county, state, and nation shall be long remembered; that as a tribute to his memory this resolution be adopted by the Senate; and that when we adjourn today, we do so in his honor; and a page be set aside in today's Senate Journal in his honored memory; and be it further

Resolved, That copies of this resolution be sent to the surviving members of his family as an expression of our sympathy.

The resolution was read and was adopted by a rising vote of the Senate.